REPORT

OF THE

NORTH DAKOTA LEGISLATIVE MANAGEMENT

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

SIXTY-THIRD LEGISLATIVE ASSEMBLY
2013

TABLE OF CONTENTS

Chairman's Letter 1

History and Functions of the North Dakota Legislative Management and Legislative Council 2

North Dakota Legislative Management Committee Membership and Staff 4

Summary of Committee Reports 10

Report and Recommendations

Administrative Rules

Administrative Agency Rules Review 18
Rules Notice Publication 19
Committee Recommendation 19
Current Rulemaking Statistics 19
Rule Review Schedule 19
Committee Action on Rules Reviewed 19
Repealing Obsolete Rules 19
Voiding or Carrying Over Rules 20
Rules Carried Over or Amended by Committee Approval 20
Rules Voided by Committee 20
Study of Board and Commission Member Compensation 20
Conclusion 21
Table A - Statistical Summary of Rulemaking 22

Advisory Commission on Intergovernmental Relations

Motor Vehicle Permit Fees Study 23
Background 23
2011 Legislation 23
Statutory Vehicle Size and Width Limitations 24
Testimony and Commission Considerations 28
Recommendation 29
Disaster Response and Recovery and Liability Study 30
Testimony and Commission Considerations 30
Recommendation 30
Crew Camp and Group Housing Regulation Study 30
Testimony and Commission Considerations 30
Recommendation 31
Fire Service Training Study 31
Testimony and Commission Discussion 31
Conclusion 32

Agriculture

North Dakota Century Code Provisions Relating to Agriculture 33
Objectives and Scope of Committee's Efforts 33
Omitted Provisions 33
Cross-Reference Table - Current Sections 34
Cross-Reference Table - Proposed Sections to Current Sections 35
Recommendations 36
Miscellaneous 36

Budget Section

Office of Management and Budget 43
2009-11 Biennium General Fund Revenues and Expenditures 43
2009-11 Biennium General Fund Emergency and Supplemental Appropriations

and General Fund Turnback 43
Status of the General Fund 43
September 2012 Revenue Forecast 44
Tobacco Settlement Proceeds 44
Fiscal Irregularities 44
Employee Bonuses 44
Implementation of State Employee Compensation System Initiatives 45
Capital Improvements Preliminary Planning Revolving Fund 46
2013-15 Biennium Budget Form Changes 46
Status of the Risk Management Workers' Compensation Program 46
American Recovery and Reinvestment Act of 2009 46
Federal Grant Applications 46
State Board of Higher Education Variance Reports 47
Higher Education 48
Capital Projects 48
University of North Dakota - Joint Information Technology Project 49
North Dakota State University - Minard Hall 50
Legacy and Budget Stabilization Fund Advisory Board 50
Adjutant General 50
2011 Emergency Snow Removal Grants 50
2009 Flood Disaster-Related Expenditures 50
2011 Flood Disaster-Related Expenditures 51
State Disaster Relief Fund 51
State Treasurer 52
Outstanding Warrants and Checks 52
State Board of Agricultural Research and Education Status Report 52
Information Technology Department 52
Annual Reports 52
Department of Human Services 53
Transfers in Excess of $50,000 53
Status of Medicaid Management Information System 53
State Department of Health 54
Environmental Protection Agency Litigation and Other Administrative Proceedings 54
Tobacco Prevention and Control Executive Committee 54
Department of Commerce 54
Annual Audits of Renaissance Fund Organizations 54
Centers of Excellence 55
Centers of Research Excellence 55
Centers of Excellence and Centers of Research Excellence Audit and Monitoring Reports 55
Electronic Portfolio System Pilot Program 56
Ethanol Plants Receiving Production Incentives 56
Department of Corrections and Rehabilitation 56
Prison Expansion Project 56
Insurance Department 56
Federal Patient Protection and Affordable Care Act 56
Industrial Commission 57
Environmental Protection Agency Litigation and Other Administrative Proceedings 57
Upper Great Plains Transportation Institute 57
Transportation Infrastructure Needs Study 57
State Water Commission 57
Resources Trust Fund 57
Game and Fish Department 57
Land Acquisition Requests 57

Department of Trust Lands 58
State Agency Unclaimed Property 58
Job Service North Dakota 58
Status of the Job Insurance Trust Fund 58
Legislative Hearings for Federal Block Grants 58
Background 58
Recommendation 58
Federal Funds 58
Legislative Council Staff Reports 58
Agency Requests Authorized by the Emergency Commission 59
Status of the State Contingencies Appropriation 59
Other Reports 59
Agency Requests Considered by the Budget Section 60

Commission on Alternatives to Incarceration
Background 63
Department of Corrections and Rehabilitation 63
Adult Services Division 63
Parole and Probation Division 64
Dakota Women's Correctional and Rehabilitation Center 64
Division of Juvenile Services and Youth Correctional Center 64
2009-10 Interim Study Recommendations and 2011 Legislation 64
2011-13 Executive Budget 64
Work and Education Release Bill 64
Community Service and Other Fees Study 65
Short-Term Shelter Care Bill 65
Other Recommendations and Statements 65
Testimony and Commission Considerations 65
Department of Corrections and Rehabilitation 65
Recidivism 65
Prison Education Programs 65
Work Release and Transition Programs 66
Performance-Based Sentence Reduction 66
Community Supervision and Electronic Monitoring 66
Treatment Programs 66
Department of Human Services 66
Coordination of Services 66
Integrated Dual Disorder Treatment 67
Robinson Recovery Center 67
Class C Felony Theft Offenses 67
Driving Under Suspension Offenses and Penalties 68
Conclusions and Recommendations 68
Imposition of Fees Upon Offenders Study 69
Background 69
2005-06 Interim and 2007 Legislation 69
2007-08 Interim and 2009 Legislation 69
2009-10 Interim and 2011 Legislation 69
Community Service Programs 70
Other Statutory Fees 70
Testimony and Commission Considerations 71
Conclusion 71

Education Funding and Taxation
Concussion Management Study 72
Background 72
What is a Concussion? 72

Signs and Symptoms of a Concussion 72
When to Seek Medical Attention 72
Statistics 72
Legislation 73
Genesis 73
North Dakota 73
Study 73
Recommendation 75
Education Finance Study 75
Background 75
North Dakota Constitutional Directives 75
Litigation - *Bismarck Public School District No. 1 v. State of North Dakota* 75
Directional Changes - Exploring Alternatives in the 1990s - Initial Discussions 76
Reliance on Property Taxes 76
Litigation - *Williston Public School District No. 1 v. State of North Dakota* 77
North Dakota Commission on Education Improvement 77
Education Finance - 2007 Legislative Session 77
Study of Educational Adequacy - Picus Report 77
Education Finance - 2009 Legislative Session 78
Education Finance - 2011 Legislative Session 80
Property Tax Relief Legislation 80
2007 Legislative Session 80
2009 Legislative Session 80
2011 Legislative Session 80
Study 81
Conclusion 81
Miscellaneous Reports 81

Employee Benefits Programs
Consideration of Retirement and Health Plan Proposals 82
Teachers' Fund for Retirement 83
Bill No. 43 86
Bill No. 99 86
Public Employees Retirement System 86
Bill No. 100 90
Bill No. 101 91
Bill No. 102 91
Bill No. 103 91
Additional Committee Responsibilities 92

Energy Development and Transmission
Comprehensive Energy Study 94
Energy Policy Commission 94
Renewable Energy Development Fund and Value-Added Opportunities Study Bill Draft 95
Employment Data Appropriation Bill Draft 96
Oil and Gas Research Fund and Value-Added Opportunities Study Bill Draft 96
Housing Incentive Fund and Tax Credit Bill Draft 96
Carbon Dioxide Reports - Testimony on Carbon Dioxide Capture and Sequestration 96
North Dakota Pipeline Authority Report - Testimony on Oil and Gas Pipelines 97
North Dakota Transmission Authority Report - Testimony on Transmission 97
Energy Sector Review 98
Biodiesel 98
Ethanol 98

Biomass 98
Energy Efficiency 98
Solar, Geothermal, Hydrogen, and Hydroelectric Power 98
Coal 99
EPA Regulation 99
Coal Combustion Residues Bill Draft 100
Coal Mine Reclamation Regulation 101
Coal Research and Development 101
Natural Gas 101
Oil 102
Refining 102
North Dakota Pipeline Authority Refineries Bonding Bill Draft 102
Oil Extraction Tax Exemption for Refineries Bill Draft 103
Petroleum Marketing 103
Wind 103
Carbon Dioxide Utilization 103
Oil and Gas Development 103
Oil and Gas Development Impact 104
Schools 104
Cities 105
Counties 105
Townships 105
Independent Water Providers 106
Utility Providers 106
Emergency Medical Services Providers 106
Day Care Providers 106
Appraisers 106
Financial Institutions 106
Housing 106
Impact on Public Service Commission 106
Impact on Department of Transportation 107
Workforce 107
Impact Grant Process 107
Impact Funding Methods 108
Pace of Impact 108
Recommendations 108
Eminent Domain and Pipeline Siting Study 108
Eminent Domain 108
Pipeline Siting 109
Consumer Protection Provisions 109
Abandoned Pipelines 110
Testimony and Discussion 110
Conclusion 112

Government Services

Study of the Use of State-Owned Airplanes 113
Fleet Services 113
Previous Studies 113
State-Owned Airplanes 113
Department of Transportation Airplanes 114
Highway Patrol Airplane 114
Game and Fish Department Airplanes 114
North Dakota Aeronautics Commission Airplane 114
Attorney General's Office Airplane 115
North Dakota State University Airplane 115
Airplane Expenses 115

Airplane Hanger Facilities 116
Recommendations 116
Study of Options to Relocate the Highway Patrol Training Academy 116
Previous Studies 117
2003-04 Interim Law Enforcement Training Needs Study 117
1993-94 Interim Study on Law Enforcement Training 117
History of Current Facility 117
Location of Current Facility 117
Funding Provided for Current Facility 117
Current Operations 117
Concerns With Current Location 118
Other State Facilities Reviewed 118
Other Emergency Services Training Facilities 118
Proposed Training Academy Facility 120
Proposed Facility Details 120
Estimated Costs of Proposed Facility 120
Recommendations 121
State Budget Information 121
Status of the General Fund and Other Selected Funds 121
2013-15 Biennium Preliminary General Fund Revenue Forecast 122
Preliminary 2013-15 Biennium General Fund Budget Outlook 122
Executive Budget Initiatives for the 2013-15 Biennium 125
Major Agency Budget Items for the 2013-15 Biennium 127
Oil and Gas Information 127
Oil and Gas Production 127
Oil and Gas Tax Revenues 127
Oil and Gas Impact Grant Fund 128
Other Information Received 128
Status of Public Employees Retirement System 128
Classified State Employee Compensation System - Implementation of Hay Group Recommendations 128
Fleet Services Rates and 2013-15 Biennium Budget Guidelines 128
Information Technology Department 2013-15 Biennium Budget Guidelines 128
Sales Tax Collections 128
Elementary and Secondary Education Information 129
Homestead and Disabled Veterans Property Tax Credit Programs 129
Rebuilders Loan Program 129
Transportation Information 129
Recommendations 130
Agreements Between North Dakota and South Dakota 130

Health Care Reform Review

Pre-Special Session 131
Background 131
Affordable Care Act 131
2009-10 Interim Industry, Business, and Labor Committee Study 132
2011 Legislation 132
House Bill No. 1004 132
House Bill No. 1125 132
House Bill No. 1126 132
House Bill No. 1027 133
House Bill No. 1165 133
Senate Bill No. 2010 133
Senate Bill No. 2012 133
Senate Bill No. 2037 133
Senate Bill No. 2309 133

Testimony 133
Health Benefit Exchange 134
State-Administered Health Benefit Exchange 134
Status Reports and Updates 134
Michael O. Leavitt 135
Panel Discussions 135
Surveys 135
Bill Drafts 136
Administration 136
Board Members 136
Risk Pools 137
Market Inside and Outside Exchange 137
Navigators 137
Small Employers 137
Administrative Hearings 137
Funding 137
Technology 138
Additional Elements of the ACA 138
Medical Expansion 138
External Review 138
Recommendations 139
Special Session 140
Legislation 140
House Bill No. 1474 - Health Benefit Exchange 140
House Bill No. 1475 - Appropriation 140
House Bill No. 1476 - External Review Procedure 140
Post-Special Session 140
Affordable Care Act Testimony 141
External Review Procedure 141
Department of Human Services Eligibility Determination System 141
Frontier States Amendment 141
Health Benefit Exchange 141
Essential Health Benefits 142
Supreme Court Decision 144
Medicaid 144
Comprehensive Health Association of North Dakota 145
Affordable Care Act - Considerations and Recommendation 145
Considerations 145
Recommendation 145
State Health Care Delivery Plan Study Testimony 146
Health Care Trends in Oil Country 146
Wellness 146
Third Street Clinic 146
Community Health Centers 146
Bridging the Dental Gap 146
MediQHome 146
PERS 147
Prescription Drug Issues 147
Charity Care and Bad Debt 147
State Health Care Delivery Plan - Recommendation 147

Health Services
Regional Public Health Network Pilot Project Study 148
Background 148
Regional Public Health Pilot Project 149
Legislative Action 149

Project Summary 150
Effect on Participating Public Health Units 150
Evaluation 151
Proposed Changes 151
Other Information and Testimony 151
Recommendation 152
Study of the Feasibility of Placing the Fort Berthold Reservation in a Single Public Health Unit 152
Background 152
Benefits and Challenges 153
Idaho Model 153
Governance Structure 153
Funding 154
Separate Health Unit Proposal 155
Recommendation 155
Studies of the Future of Health Care Delivery in the State and the Ability of the University of North Dakota School of Medicine and Health Sciences to Meet the Health Care Needs of the State 155
Background 155
Programs and Services Available to Provide Health Care in Rural Areas of the State 156
Health Care Workforce Needs 156
School of Medicine Health Care Workforce Initiative 157
Reduction of the Disease Burden 157
Improvements in the Efficiency of the Health Care System in the State 157
Training and Retention of Health Care Providers 158
2011 Legislative Action 159
Status of New and Expanded Programs 160
2013 Legislative Request 160
School of Medicine Space Utilization Study 160
Recommendation 161
Mandated Health Insurance Coverage 161
Health Insurance Mandate Analysis Costs 162
Length of Time Necessary to Complete Cost-Benefit Analysis 162
Legislative Rules Regarding Bills That Include Health Insurance Mandates 162
Insurance Commissioner Recommendation 162
Recommendations 162
State Fire Marshal Report 162
State Department of Health Report on Inventory of Material Relating to Abortions 163
Health Council Report on Health Care Bed Recommendations 163
Recommendations 164
Other Information Received 164
Health Care Data Committee 164
Recommendation 164
Smoking Rates and Related Trends 164
Emergency Medical Services Advisory Council 165
Community Paramedic Program 166
Recommendation 166
Status of State Trauma System 166
Report on the Construction of the School of Medicine Southwest Campus Facility 166

Higher Education
Previous Legislative Higher Education Studies and Related Legislation 167
Higher Education Study 168
Background 168
Higher Education Funding Models 169

Current University System Funding Model 169
Performance Funding Models 169
University System Performance Funding Proposal 169
Tennessee Outcomes-Based Funding Method 170
Indiana Performance Funding Model 170
Success-Based Funding Method 171
Governor's Task Force on Higher Education Funding Model 171
Student Fees 171
Background 171
Student Fee Charges and Collections 172
Performance Audit and Student Fees 174
Developmental Education 174
Background 174
High School Graduation Requirements 174
University System Admissions Standards 175
Student Enrollment in Developmental Education Courses 175
Higher Education Governance 176
Background 176
Governing Board Types 176
Alternative Higher Education Governance Structure 176
Higher Education Accountability Measures 176
Background 176
University System Accountability Measures Report 177
Tuition Waivers 177
Pathways to Student Success Plan 178
Other Information Received 178
Higher Education Impact on State Workforce Needs 178
State Board of Higher Education's Maximizing Results Through Efficiencies Initiative 179
University System 2013-15 Biennium Budget Request 179
STEM Education 180
NDSU Tuition Rate Increase 180
Campus Needs Resulting From Oil and Gas Development 180
Enrollment Information 180
University System Information Technology 181
State Board of Higher Education Lawsuit Challenging Legislative Authority 181
Other Miscellaneous Information Received 181
Recommendations 181
Statewide Longitudinal Data System Update 182
Information Received 182
University of North Dakota School of Medicine and Health Sciences Advisory Council Report 182
Report 182
North Dakota Career and Technical Education and Academic Scholarships 183
Report 183
Grants to Tribally Controlled Community Colleges 184
Report 184
International Transfer Agreements at Dickinson State University 184

Human Services

Study of the Autism Spectrum Disorder 186
Background 187
Autism Spectrum Disorder Task Force 187
Department of Human Services Autism Spectrum Disorder Medicaid Waiver 187
Department of Human Services Regional Autism Spectrum Disorder Center of Early Intervention and Achievement 187

Testimony and Recommendations 188
Department of Human Services 188
Department of Public Instruction 188
Other Interested Persons 188
Committee Recommendations 190
Study of Guardianship Services 190
Background Information 191
Consultant Services and Methodology 191
Findings and Recommendations 191
Guardianship Services Delivery Model Preliminary Estimated Costs 196
Responses to Findings and Recommendations 196
Department of Human Services 196
Supreme Court 196
North Dakota Association of Counties 196
Guardian and Protective Services, Inc. 196
Committee Members 197
Committee Considerations 197
Committee Recommendations 198
Study of Department of Human Services' Caseloads and Program Utilization 198
Background Information 198
Department of Human Services - History of Legislative Appropriations 198
North Dakota Total Population Estimates 199
North Dakota Per Capita Personal Income 200
Percentage of North Dakota Population (Children Aged 0 to 17) in Poverty Compared to the United States 200
Percentage of North Dakota Population (All Ages) in Poverty Compared to the United States 200
Historical Caseloads and Program Utilization 200
Economic Assistance Division 201
Children and Family Services Division 201
Medical Services and Long-Term Care Continuum 201
Human Service Centers 202
State Hospital 202
Developmental Center 203
Effect of Federal Health Care Reform 203
Background Information 203
Committee Testimony 203
Department of Human Services - New Full-Time Equivalent Positions 204
Committee Recommendation 204
Study of the Qualified Service Provider System 204
Qualified Service Providers 204
Types 204
Enrollment and Services 204
Payment Rates 205
Testimony and Other Related Information 205
Committee Recommendation 206
Other Responsibilities 206
Children's Health Insurance Program Reports 206
Background Information 206
Testimony 207
Health Information Technology Report 207
Background Information 207
Testimony 207
Dementia Care Services Program Reports 207
Background Information 208
2011-12 Status Report 208

Developmental Disabilities Reimbursement System Reports 208
Background Information 208
Status of Development of the New Reimbursement System 210
Substance Abuse Services Pilot Voucher Payment Program Report 210
Background Information 210
Testimony 211

Information Technology
Information Technology Department Strategic Plan 213
Information Technology Department Annual Report 214
Policies, Standards, and Guidelines 215
Information Technology Plans 216
Major Information Technology Projects 216
Project Management Lifecycle Processes 216
Review of Major Information Technology Projects 218
Department of Human Services - MMIS Rewrite Project 222
Workforce Safety and Insurance - Information Technology Transformation Project 223
Secretary of State - Data Processing System Projects 223
Highway Patrol - Electronic Permits Project 224
Prioritization of Proposed Major Computer Software Projects 224
Information Technology Department Coordination of Services 225
Higher Education 225
Planning, Services, and Major Projects 225
Northern Tier Network 225
Joint University System and University of North Dakota Information Technology Building Project 225
Elementary and Secondary Education 226
Political Subdivisions 226
Other Information 226
Information Technology Department 2013-15 Information Technology Rates and Budget Request 226
Information Technology Department Vulnerability Assessment and Penetration Testing 227
Statewide Longitudinal Data System Initiative 228
Health Information Technology 228
Committee Recommendations 229

Judiciary
Extended Juvenile Court Jurisdiction Study 230
North Dakota Juvenile Court System 230
Background 230
Disposition of Delinquent Child Cases 231
Juvenile Caseload Data 231
Senate Bill No. 2305 231
Testimony and Committee Considerations 231
Recommendation 233
Statute of Limitations and Venue Study 233
Statutes of Limitation 233
Venue Requirements in Civil Actions 234
Testimony and Committee Considerations 234
Statute of Limitations 234
Venue 235
Recommendation 235
Uniform Electronic Recording of Custodial Interrogations Act 235
Testimony and Committee Considerations 235

Conclusion 236
Charitable Gaming Organization Study 236
Charitable Gaming - Early History 236
Charitable Organizations 236
Administration of the Charitable Gaming Law 237
Licensing Procedures 237
Enforcement of the Charitable Gaming Laws 237
Taxation of Charitable Gaming Proceeds 237
Testimony and Committee Considerations 237
Charitable Gaming Organizations 237
Gaming Activity and Taxes 238
Conclusion 238
Revised Uniform Limited Liability Company Act 239
Background 239
Testimony and Committee Considerations 239
Conclusion 239
Uniform Laws Review 239
Technical Corrections - Recommendation 240
Legislative Management Directives 240
Internet Gambling Opinion 240
Revised Federal Definition of Rape 241
Comprehensive Status and Trends Report 241
Commission on Legal Counsel for Indigents Annual Report 242
Racing Commission Report 242
Lottery Report 242
State Hospital Report on Sexually Dangerous Individuals Treatment Program 243

Legislative Audit and Fiscal Review
Guidelines for Audits of State Agencies 244
Audit of the State Auditor's Office 245
Comprehensive Annual Financial Report 245
North Dakota University System Annual Financial Report 245
Performance Audits and Evaluations 245
Dickinson State University 245
Use of State-Supplied Vaccines by a Provider 246
State Department of Health Family Health Division 247
Fees Charged at North Dakota State University and the University of North Dakota 247
Wildlife Services Performance Audit Followup 248
UND School of Medicine and Health Sciences Performance Audit Followup 248
Department of Commerce Performance Audit Followup 248
Future Performance Audits 248
Information Technology Audits 248
North Dakota Network and Security Audit 248
Other Reports 249
Department of Human Services Accounts Receivable Writeoffs 249
Other Information 249
Audit Reports Accepted by the Legislative Audit and Fiscal Review Committee During the 2011-13 Interim 250

Legislative Procedure and Arrangements
Legislative Space Renovation Projects 253
Legislative Chambers and Legislative Hall 253
Prairie Room Committee Table 253
Ground Floor Study Area 253
Senate Balcony Areas 253

Harvest and Roughrider Rooms Tables 254
Chamber Video 254
Chamber Voting System 254
Committee Room Presentation Equipment 254
Committee Room Video and Audio 254
Legislative Space Use 254
Legislative Chambers and Memorial Hall 254
Legislative Committee Rooms 254
Legislative Rules 255
Senate and House Rules 206 - Officers and Employee Positions 255
Senate and House Rules 342 - Announcement of Vote 255
Senate and House Rules 346(2) - Transmittal of Measures 255
Senate and House Rules 601(3) - Placement of Amended Measure on Calendar 255
Joint Rule 501 - Fiscal Notes 255
Joint Rule 801.1 - Recording of Proceedings 255
Other Rules Proposals Considered 256
Legislative Information Services 256
Bills, Resolutions, and Journals Subscription 256
Bill Status Report Subscription 256
Committee Hearing Schedules and Daily Calendars Subscription 256
Bill and Journal Room Photocopy Policy 256
Incoming WATS Line Service 256
Contracts for Printing Legislative Documents 257
Background 257
Contract Contents 257
Legislative Compensation 257
Legislative Compensation Review 257
Legislator Expense Reimbursement Policy 257
Legislative Computers 257
Legislator Data Plan Reimbursement 257
Legislator Computer Training 258
Personal Computer Use Policy 258
Computer Replacement 258
Session Arrangements 258
Doctor of the Day Program 258
Legislator Wellness Program 258
Legislators' Supplies 259
Stationery 259
Brief Bags 259
Capitol Access Cards 259
Legislator Photo Identification Cards 259
Legislator Photographs 259
Journal Distribution Policy 259
Session Employee Positions 259
Session Employee Compensation 260
Session Employee Orientation and Training 260
Secretarial, Telephone Message, and Bill and Journal Room Services 260
Secretarial Services 260
Telephone Message Services 260
Bill and Journal Room Services 260
Consolidated Services 260
Secretarial Services Policy 261
Legislative Internship Program 261
Legislative Tour Guide Program 261
Chaplaincy Program 261
Organizational Session Agenda 261

State of the State Address 261
State of Judiciary Address 261
Tribal-State Relationship Message 262
Agricultural Commodity Promotion Groups Report 262
Agriculture Commissioner Report 262
Commissioner of Commerce Report 262
Legislative Ethics Committee 262
Telephone Usage Guidelines 262
Special Session Arrangements 262
Legislative Rules 262
Session Employees 263
Miscellaneous Matters 263

Legislative Redistricting
Background 264
Redistricting History in North Dakota 264
1931-1962 264
1963 264
1965 264
1971 265
1973-75 265
1981 265
1991-95 265
2001 266
North Dakota Redistricting Law 267
Constitutional Provisions 267
Statutory Provisions 267
Federal Redistricting Law 267
Population Equality 267
Partisan Gerrymandering 269
Mulitmember Districts and Racial or Language Minorities 269
Testimony and Committee Considerations 270
Redistricting Computers and Software 270
Size of Legislative Assembly 270
Population Deviation 271
Preservation of Political Subdivision Boundaries 271
Indian Reservations 271
Urban and Rural Considerations 271
Population Growth in Boom Areas 271
Identifiable District Boundaries 271
Staggering of Terms 271
Creation of Voting Precincts 271
Recommendations 272

Natural Resources
Primacy Study 273
Primacy Agreements 273
Testimony and Discussion 274
State Department of Health Primacy Agreements 274
Department of Agriculture Primacy Agreements 274
Industrial Commission Primacy Agreements 274
The Application of EPA Regulation in This State 275
Conclusion 276
Potash Mining and Taxation Study 276
Legislative History of Study 276
Allocation and Impact 276

Taxation 277
Regulation 277
Testimony and Discussion 277
Regulation 277
Review of Mines and Mining Process 278
Eby Test Well 279
Taxation 279
Impact 279
Conclusion 280
Federal Designations Study 280
Legislative History of Study 280
State Law 280
Northern Plains National Heritage Area 281
Testimony and Discussion 282
Conclusion 283
Report on Goose Hunting and Resident and Nonresident Goose Hunters 283

Property Tax Measure Review
Study of the Potential Effects of Initiated Measure No. 2 284
Background 284
Summary of Initiated Measure 284
Related Legislation 284
Property Tax 284
Taxable Value 284
Other Taxes 284
Statewide Property Taxes 285
Political Subdivision Bonded Indebtedness 285
Property Tax Foreclosures 285
Types of Bonded Indebtedness 285
Initiated Measure Construction 286
Attorney General Opinion 286
Analysis of Initiated Measure No. 2 286
Other Testimony and Information 287
Initiative Petition Sponsoring Committee 287
North Dakota Association of Counties 287
North Dakota League of Cities 287
North Dakota School Boards Association and North Dakota Council of Educational Leaders 288
Other Testimony 288
Estimated Fiscal Impact of Initiated Measure No. 2 288

Taxation
Income Tax Credits Study 289
Reports on Effectiveness of Credits 289
Conclusion 290
Property Tax Reform and Relief Study 290
Background 290
Senate Bill No. 2199 (2009) 290
House Bill No. 1047 (2011) 290
Property Taxes Increases 290
Other 2011 Property Tax Legislation 290
Property Tax System 291
Determination of Mill Rate 291
Assessment of Locally Assessed Property 291
Assessment of Centrally Assessed Property 291
Payments in Lieu of Taxes 291

Property Tax Statistics and Political Subdivision Revenues 292
State Funding to Political Subdivisions 292
Effective Tax Rate 292
Property Tax Shifting 292
Property Tax Growth 292
Political Subdivision Debt Information 293
School District Objections 293
Residential Property Tax Credit 293
Residency Determination 293
Mobile Home Taxes 293
Withdrawal of Exemptions 293
Committee Deliberations 293
Recommendations 294
Special Assessments Studies 294
Statutory Authority for Special Assessment Imposition 294
Initiation of Process for Improvements by Special Assessment 294
Protest of Improvements by Special Assessment 295
Assessment of Benefits to Property Owners 295
Collection of Special Assessments 295
Agricultural Property Tax Issues 295
Committee Deliberations 296
Conclusion 297
Corporate Income Tax Study 297
Taxable Income of Corporations 297
Combined Reporting Requirements 297
Water's Edge Election 297
2011 Corporate Income Tax Legislation 297
Committee Deliberations 298
Conclusion 298
Sales Tax Exemptions Study 298
Background 298
Committee Deliberations 298
Conclusion 298
Cigarette Tax Stamp Study 298
Background 298
Committee Deliberations 298
Conclusion 299
Oil Extraction Tax Study 299
Background 299
Committee Deliberations 299
Conclusion 299

Transportation

Drivers and Motor Vehicles Study 300
Previous Studies of NDCC Title 39 300
Current Study 301
Testimony and Discussion 301
NDCC Chapter 39-06 Bill Draft 302
Commercial Driver's License Fees Bill Draft 302
Number Plates Destruction Bill Draft 302
Certificate of Title for Out-of-State Vehicles Bill Draft 302
Registration Plan and Systems Bill Draft 303
Class III Off-Highway Vehicle Bill Draft 303
Traffic Offenses, Fees, and Points Bill Draft 303
Speeding Fees Bill Draft 303
Commercial Driver Training Schools Bill Draft 305

Commercial Driver's License Conformity With Federal Law Bill Drafts 305
Recommendations 305
Special Road Fund Study 305
Legislative History of Study Resolution 306
Statutory History of Special Road Fund 306
Department of Transportation Guidelines 306
Special Road Fund Administration 306
Testimony and Discussion 307
Conclusion 307
General Transportation Issues 307
Emergency Services Communications Coordinating Committee Report 309
Recommendation 309

Tribal and State Relations
Federal Indian Law and Policy 310
State-Tribal Relations 311
State-Tribal Cooperative Agreements 311
2011 Legislation 312
Corrections Issues 313
Taxation in Indian Country 313
Indian Education Issues 313
Committee Consideration 314
Recommendation 314
Commission to Study Racial and Ethnic Bias in the Courts 314
Heritage Center Expansion 314
Indian Human Services Issues 314
Child Support Enforcement in Indian Country 314
Transportation in Indian Country 315
Indian Veterans 315
Tourism Issues 315
Native American Commission 315
Economic Development Initiatives in Indian Country 315
Environmental Issues in Indian Country 315
Oil and Gas Exploration, Production, and Taxation in Indian Country 315
Oil and Gas Tax Agreement 315
Biennial Report on the Implementation of the Oil and Gas Tax Agreement With the Three Affiliated Tribes 316
Committee Consideration 316
Recommendation 316
Committee on Tribal and State Relations 316
Committee Consideration 316
Recommendation 316

Water-Related Topics Overview
2011 Mouse River Flood 317
2011 Missouri River Flood 319
Background 319
Corp of Engineers 2011 Missouri River Operations 320
Devils Lake Flood of 2011 320
Fargo Flood Risk Reduction 320
2011 Flood Damage Assessments as Reported to the Committee 321
Valley City 321
City of Fort Ransom 321
Lisbon 321
West Fargo Sheyenne River Diversion - Channel Bottom Restoration 321
Bismarck 321

Mandan 321
Minot 321
Williston 321
Fort Yates 321
Morton County 321
Cass County 321
Devils Lake and Ramsey County 322
Adjutant General 322
North Dakota Water Organization Structure - Prioritization and Funding of State Water Projects 322
Committee Considerations 322
Recommendation 322
Red River Valley Water Supply Project 323
Red River Basin Commission 323
North Dakota Water Coalition 323
Irrigation 323
Background 323
Testimony 325
Committee Consideration 325
Recommendation 325
Western Area Water Supply Authority 325
Southwest Water Authority 325

Workers' Compensation Review
Claim Review 327
General Background 327
2005-06 Interim 327
House Bill No. 1038 327
Senate Bill No. 2042 327
Senate Bill No. 2043 327
2007-08 Interim 328
House Bill No. 1061 328
House Bill No. 1062 328
House Bill No. 1063 328
House Bill No. 1064 328
Senate Bill No. 2055 328
Senate Bill No. 2056 328
Senate Bill No. 2057 328
Senate Bill No. 2058 328
Senate Bill No. 2059 328
2009-10 Interim
House Bill No. 1050 328
House Bill No. 1051 328
House Bill No. 1052 328
House Bill No. 1053 328
House Bill No. 1054 328
House Bill No. 1055 329
House Bill No. 1056 329
Review Procedure 329
First Claim 330
Case Summary 330
Issues for Review 330
Workforce Safety and Insurance Response 330
Committee Considerations 331
Second Claim 331
Case Summary 331

Issues for Review 332
Workforce Safety and Insurance Response 332
Committee Considerations 333
Workforce Safety and Insurance Status Updates 333
2011 Legislation and 2013 Proposals 333
Appeal Process 333
Special Investigations Unit 333
Workforce Safety and Insurance Board of Directors 333
Workforce Safety and Insurance Complaints 333
Pain Management Medication 333
Permanent Partial Impairment 333
Coverage of Volunteers 333
Independent Contractors 333
Claim Trends 334
Computer System Replacement Project 334
2010 WSI Performance Evaluation 334
Recommendations 334
Designated Medical Provider Program 334
Transparency 334
Permanent Partial Impairment Determinations 334
Reports 334
Rehabilitation Services Pilot Program Report 334
Modified Workers' Compensation Program Performance Audit and Roughrider Industries Safety Audit 334
Safety Grants Report 335

Study Directives Considered and Assignments Made by the Legislative Management for the 2009-10 Interim 336
Legislative Management Assignments 348
Study Measures Not Prioritized 348

2013 North Dakota Legislative Management Bill and Resolution Summaries
House 351
Bills Recommended to the 62nd Legislative Assembly Special Session 353
Senate 354

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January 8, 2013

Honorable Jack Dalrymple
Governor of North Dakota

Members, 63rd 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 using extraordinary road use fees by local jurisdictions for road support, supporting additional funding for the Robinson Recovery Center, funding a renewable energy development fund, collecting data on oil and gas-related employment, funding opportunities related to value-added processing of oil and gas, providing additional housing incentive fund tax credits, allowing the North Dakota Pipeline Authority to issue debt for refineries, providing a tax exemption for oil refined in the state, establishing a central aircraft management system for state-owned or state-leased aircraft, defining tribal health units and allowing a public health unit to be formed on an Indian reservation, supporting construction of a new University of North Dakota School of Medicine and Health Sciences facility, continuing the moratorium on nursing facility and basic care beds, changing the North Dakota University System performance and accountability measures, providing for the continued study of autism spectrum disorder, creating an autism spectrum disorder registry and voucher system, clarifying guardianship provisions and providing grants to counties for related services, changing the definition of a large information technology project and oversight requirements, providing an option for an extended juvenile jurisdiction proceeding for certain offenses, expanding property tax relief, providing a residential property tax credit, providing additional funding to counties for a reduction in property taxes levied, increasing speeding fees, transferring authority for commercial driver's license training from the Highway Patrol to the Department of Transportation, extending the Tribal and State Relations Committee, and providing more transparency regarding a medical provider's professional relationship with Workforce Safety and Insurance.

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/BM

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, the Speaker of the House, and six senators and six representatives. In the House, the Majority Leader appoints four members and the Minority Leader appoints two members. In the Senate, the Majority Leader appoints four members and the Minority Leader appoints two members.

The Legislative Management is thus composed of 11 majority party members and 6 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 and an IPad 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 is server-based and provides 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 whether it may be desirable to standardize some or all of the compensation rate provisions for members of executive branch boards and commissions. The Legislative Management makes no recommendation for changes regarding compensation rates for members of executive branch boards and commissions.

The Legislative Management recommends House Bill No. 1024 to eliminate the statutory four-inch maximum column depth restrictions for newspaper publication of notice of administrative rulemaking.

The Legislative Management reviewed all state administrative rulemaking actions from January 2011 through October 2012, covering 2,399 pages of rules. The Legislative Management did not void any rules submitted by administrative agencies from January 2011 through October 2012.

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 motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. The Legislative Management recommends Senate Bill No. 2025 to provide that extraordinary road use fees for a violation that did not occur on an interstate or a state highway must be deposited in the general fund of the jurisdiction having authority over the road on which the violation occurred and must be used for the support of the road system of that jurisdiction.

The Legislative Management studied disaster response and recovery and liability related to disaster response. The Legislative Management recommends House Bill No. 1025 to remove the requirement that the destruction of property must be ordered by the Governor to allow a property owner to be eligible for compensation if property is commandeered or used in management of a disaster or emergency; to expand the authorized uses of the state disaster relief fund to include the payment of any expenses incurred under North Dakota Century Code Chapter 37-17.1; to limit immunity in disaster response activities to individuals, rather than providing immunity to the state and political subdivisions; and to eliminate immunity for property owners permitting the use of real property for emergency management activities if the property owner has been grossly negligent.

The Legislative Management studied regulation of crew camps and group housing. The Legislative Management recommends House Concurrent Resolution No. 3001 to provide for a Legislative Management study of issues related to development of group housing and crew camps, including infrastructure demands, health and safety requirements, regulation, and enforcement of regulatory violations.

The Legislative Management studied fire service training and makes no recommendation as a result of the study.

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 Senate Bill No. 2026 to rewrite the laws pertaining to the State Seed Department, seed potato certification, and seed potato control areas and House Bill No. 1026 to rewrite the laws pertaining to the North Dakota Stockmen's Association, livestock branding, estrays, livestock dealers, and wool dealers. 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.

BUDGET SECTION

The Legislative Management received reports from the Office of Management and Budget on the status of the general fund; tobacco settlement proceeds; irregularities in the fiscal practices of the state; employee bonuses; implementation of state employee compensation system initiatives; the capital improvements preliminary planning revolving fund; the risk management workers' compensation program; the American Recovery and Reinvestment Act of 2009; federal grant applications; State Board of Higher Education capital projects variance reports; and 2013-15 biennium budget form changes. The Legislative Management approved the following changes to the budget data for the 2013 legislative session:

- Eliminate telecommute analysis data for new full-time equivalent (FTE) positions.
- Eliminate printed detailed budget data - The information will be accessible online and printed copies made available upon request.

The Legislative Management authorized the expenditure of additional other funds for capital projects, as well as changes in the scope of capital projects at Bismarck State College, Lake Region State College, Mayville State University, Minot State University, North

Dakota State University, North Dakota State College of Science, University of North Dakota, and Williston State College. The Legislative Management received periodic reports from the University of North Dakota regarding the joint information technology building project, from North Dakota State University regarding the status of the Minard Hall project, and from Minot State University regarding the effects of the 2011 flood disaster on the university.

The Legislative Management received reports from 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 State Department of Health on Environmental Protection Agency (EPA) litigation and other administrative proceedings, the Department of Corrections and Rehabilitation on its prison expansion project, the Insurance Department on the status of provisions of the Patient Protection and Affordable Care Act, the Industrial Commission on the status of litigation involving the EPA's effort to regulate hydraulic fracturing, Upper Great Plains Transportation Institute on a transportation infrastructure needs study, and Job Service North Dakota on the status of the job insurance trust fund.

The Legislative Management received reports from the Legacy and Budget Stabilization Fund Advisory Board regarding the development of investment policies for the legacy fund and budget stabilization fund.

The Legislative Management received a report from the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than three years.

The Legislative Management received the Information Technology Department's 2010-11 and 2011-12 annual reports.

The Legislative Management received reports from the Adjutant General regarding emergency disaster relief grants, 2011 emergency snow removal grants, 2009 and 2011 flood disaster-related expenditures, 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 and the status of the Medicaid management information system (MMIS) project.

The Legislative Management received reports from the Department of Trust Lands on state agencies that have not submitted a claim for unclaimed property and approved a list of 17 agencies with 35 unclaimed properties 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 on audit and monitoring reports of centers of excellence and centers of research excellence. The Legislative Management also received reports from the Department of Commerce on 2009-11 biennium centers of excellence and 2011-13 biennium centers of research excellence grants, the electronic portfolio system pilot program, and ethanol plants receiving production incentives.

The Legislative Management approved 1 land acquisition request from the Game and Fish Department, approved 3 requests from the State Water Commission to expend an additional $50 million from the resources trust fund, and approved 28 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 Senate Concurrent Resolution No. 4001 to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds during the 2013-14 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 recommends the Governor include increased funding in the executive budget for the Robinson Recovery Center, including funding specifically addressing the expansion of beds available for female clients.

The Legislative Management recommends House Bill No. 1027 to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses; expand the potential uses of a temporary restricted license to include use for attendance at an appropriate treatment program or to use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender; and authorize a court to dismiss a charge for driving under suspension if the defendant provides proof that the defendant has reinstated the operator's license within 60 days after the date of the offense.

The Legislative Management studied the imposition of fees by courts at sentencing and other fees that are imposed upon offenders and makes no recommendation as a result of its study.

EDUCATION FUNDING AND TAXATION

The Legislative Management studied concussion management with respect to youth athletics, including the nature, scope, and applicability of programs designed to prevent or eliminate concussions and short-term and longer-term state involvement in funding elementary and secondary education. The Legislative Management recommends House Bill No. 1028 to maintain the required removal of students from practice, training, or competition, in the event a concussion is suspected and permit their return only upon the authorization of a licensed health care provider who is acting within the provider's scope of practice and trained in the evaluation and management of concussion.

The Legislative Management also received 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, Indian education issues and the development of criteria for grants to low-performing schools, the state's participation in the Compact on Educational Opportunity for Military Children, the failure of any school board to meet the statutory threshold for increasing teacher compensation, the status of the statewide longitudinal data system plan, and the provisions of services to students in grades 6 through 8 who are enrolled in an alternative education program.

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 recruit or retain employees in hard-to-fill positions. The Legislative Management received a report from Human Resource Management Services on service awards, employer-paid cost of training costs or educational courses, and employer-paid professional organization membership and service club dues for individuals. The Legislative Management received periodic reports from Office of Management and Budget officials on the status of implementation and administration of the compensation philosophy statement and compensation system initiatives included in 2011 House Bill No. 1031.

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 resources to the sale of the final product in this state, other states, and other countries. The Legislative Management recommends Senate Bill No. 2027 to take 5 percent, up to $3 million per biennium, of the amount credited to the resources trust fund and place it in the renewable energy development fund. The bill provides an appropriation for a study for value-added market opportunities for renewable energy resources. The Legislative Management recommends Senate Bill No. 2028 to provide an appropriation to Job Service North Dakota for the purposes of upgrading the collection and use of employment data to identify transportation employees and other employees who should be included in oil-related and gas-related employment. The Legislative Management recommends Senate Bill No. 2029 to provide an additional $6 million per biennium to the oil and gas research fund with intent that $5 million be used by the Industrial Commission for opportunities related to value-added processing of oil and gas. The bill provides an appropriation for a study of value-added market opportunities related to oil and gas. The Legislative Management recommends House Bill No. 1029 to increase the cap on the aggregate amount of tax credits for housing incentive fund contributions from $15 million to $20 million per biennium and cap the fund at $50 million. The bill allows the Housing Finance Agency to enter partnerships and reserve a share of the housing for the private partner's workforce and to charge administration fees to project developers, applicants, or grant recipients. The Legislative Management recommends House Bill No. 1030 to accept the present use and disposal of coal combustion residues. The Legislative Management recommends House Bill No. 1031 to allow the North Dakota Pipeline Authority to issue evidences of indebtedness for refineries. The Legislative Management recommends House Bill No. 1032 to provide an exemption from the oil extraction tax if the oil is sold to and refined by a refinery located in this state.

The Legislative Management studied eminent domain laws as they relate to pipeline siting. The Legislative Management makes no recommendation as a result of its study.

GOVERNMENT SERVICES

The Legislative Management studied the use of state-owned airplanes, including a review of airplanes owned by state agencies, the justification for owning each airplane, the frequency of use of each airplane, and the feasibility and desirability of requiring state-owned airplanes to be managed by the Department of Transportation's State Fleet Services. The Legislative Management recommends House Bill No. 1033 to establish a central aircraft management system within the Department of Transportation for state-owned or state-leased aircraft.

The Legislative Management studied options for relocating the Highway Patrol training academy, including a review of options for relocating the training academy, options for relocating the emergency operations vehicle training course, and options for constructing a Highway Patrol shooting range.

The Legislative Management monitored the status of the general fund and other major funds and received the revised 2011-13 biennium and preliminary 2013-15 biennium general fund revenue forecasts. The Legislative Management also received information regarding 2013-15 biennium cost-to-continue items, major agency budget items for the 2013-15 biennium, and major executive budget initiatives to be considered during the 2013 legislative session.

HEALTH CARE REFORM REVIEW

The Legislative Management monitored the impact of the Affordable Care Act, studied the impact of the Affordable Care Act on the Comprehensive Health Association of North Dakota, and studied the feasibility and desirability of developing a state plan that provides North Dakota citizens with access to and coverage for health care which is affordable for all North Dakota citizens. Additionally, the Legislative Management received regular updates from the Insurance Commissioner, Department of Human Services, and Information Technology Department regarding planning for, administration of, and enforcement of the Affordable Care Act.

As part of its study charge, the Legislative Management recommended the three bills that were introduced during the November 2011 special session--House Bill No. 1474 would have provided for a state-administered health benefit exchange; House Bill No. 1475 provided appropriations for Affordable Care Act-related costs of the Department of Human Services, the Information Technology Department, and the Insurance Commissioner; and House Bill No. 1476 clarified the external review procedures required for health insurance policies.

For the regular legislative session in 2013, the Legislative Management recommends House Bill No. 1034 to provide for a Legislative Management study of health care reform options. As part of this study, the Insurance Commissioner, Department of Human Services, and State Department of Health are to provide status reports on the state of health insurance and health-related public assistance.

HEALTH SERVICES

The Legislative Management studied the regional public health network pilot project conducted during the 2009-11 biennium. The study included an assessment of the regional public health network pilot project, including services provided, effects of the project on participating local public health units, efficiencies achieved in providing services, cost-savings to state and local governments, and possible improvements to the program. The Legislative Management recommends Senate Bill No. 2030 to remove the requirement that participating local public health units share administrative functions, provide that any joint powers agreement include core activities, and include outcome measures for the regional public health network program. The bill provides an appropriation to the State Department of Health to establish, administer, and operate regional public health networks in the state.

The Legislative Management studied the feasibility and desirability of placing the entire Fort Berthold Reservation in a single public health unit. The Legislative Management recommends Senate Bill No. 2031 to define tribal health units and allow a public health unit to form on an Indian reservation. The bill provides an appropriation to the State Department of Health for the purpose of implementing a tribal public health unit pilot project and requires a report to the Legislative Management semiannually.

The Legislative Management studied the future of health care delivery in the state. The study focused on the delivery of health care in rural areas of the state and included input from the University of North Dakota School of Medicine and Health Sciences Center for Rural Health, hospitals, and the medical community. In addition, the Legislative Management studied the ability of the School of Medicine to meet the health care needs of the state. This study included a review of the health care needs of the state, options to address the health care needs of the state, and the feasibility and desirability of expanding the School of Medicine to meet the health care needs of the state. The Legislative Management recommends supporting the construction of a new School of Medicine facility at an estimated cost of $124 million to accommodate the student enrollment growth associated with the health care workforce initiative at the School of Medicine.

The Legislative Management received a report from the Health Council regarding a review of current health care bed recommendations and whether changes should be made to better serve the population of North Dakota. The Health Council recommended continuing the moratorium on nursing facility and basic care beds in the state, reducing the recommended target number of nursing facility beds in the state from 60 to 55 nursing facility beds per 1,000 population aged 65, continuing the recommended target number for basic care facility beds at 15 basic care beds per 1,000 of population over age 65, and the Legislative Assembly reconsider provisions that allow for new and additional basic care beds.

The Legislative Management accepted the recommendations of the Health Council relating to the reduction in the recommended target number of nursing facility beds in the state and the continuation of the recommended target number for basic care facility beds. In addition, the Legislative Management recommends House Bill No. 1035 to extend the current moratoriums on the expansion of licensed nursing facility and basic care beds through July 31, 2015.

The Legislative Management received a report from the Health Care Data Committee of the Health Council regarding the mission of the Health Care Data Committee. The Legislative Management recommends House Bill No. 1036 to change the name and the duties of the Health Care Data Committee.

The Legislative Management received a report from the State Department of Health regarding the potential for community paramedics to provide additional cost-effective clinical and public health services, particularly in rural areas of the state. The Legislative Management recommends Senate Concurrent Resolution No. 4002 to study the potential for community paramedics to provide additional clinical and public health services particularly in rural areas of the state, including the ability to receive reimbursement for these services and the effect these reimbursements would have on the sustainability of emergency medical services providers.

The Legislative Management received a report from the Insurance Commissioner regarding cost-benefit analyses for bills mandating health insurance coverage during the 2011 legislative session. The Legislative Management accepted the Insurance Commissioner's recommendation to continue to contract with Milliman and Associates to conduct cost-benefit analyses during the 2013 legislative session.

The Legislative Management received reports from the State Fire Marshal regarding a review of the effectiveness of test methods and performance standards for cigarettes and from the State Department of Health regarding the status and outcome of efforts relating to the collection and reporting of abortion data.

HIGHER EDUCATION

The Legislative Management studied issues affecting higher education, including funding methods, governance,

accountability, the use of student fees, and developmental education. The Legislative Management recommends Senate Bill No. 2032 to require the University System performance and accountability report to include certain accountability measures.

The Legislative Management received reports from the School of Medicine regarding the strategic plans, programs, and facilities of the School of Medicine; from tribally controlled community colleges receiving a grant under Chapter 15-70 regarding the enrollment of students for which grant funding was received; from Dickinson State University regarding the internal review report of special international programs; from the Information Technology Department regarding the status of the statewide longitudinal data system; and from the State Board of Higher Education regarding North Dakota academic and career and technical education scholarships.

HUMAN SERVICES

The Legislative Management studied the current system for the diagnosis of, early treatment of, care for, and education of individuals with autism spectrum disorder; received reports on the autism spectrum disorder plan from the Autism Spectrum Disorder Task Force; and received reports from the Department of Human Services regarding its regional autism spectrum disorder centers of early intervention and achievement pilot program. The Legislative Management recommends:

- House Bill No. 1037 to provide for a continued Legislative Management study of the current system for the diagnosis of, early treatment of, care for, and education of individuals with autism spectrum disorder.
- House Bill No. 1038 to provide an appropriation to the State Department of Health for establishing and administering an autism spectrum disorder registry and an appropriation to the Department of Public Instruction for providing training and support for teacher and other school staff.
- House Bill No. 1039 to provide an appropriation to the Department of Human Services for developing a voucher system for autism spectrum disorder services and support.

The Legislative Management contracted with a consultant to study guardianship services for vulnerable adults in the state. The Legislative Management recommends:

- House Bill No. 1040 to clarify provisions relating to notices in guardianship proceedings and to provide for emergency guardianships.
- House Bill No. 1041 to provide an appropriation to the Office of Management and Budget for providing grants to counties for guardianship and public administrator services and an appropriation to the Supreme Court for guardianship training.

The Legislative Management studied the causes of the increases in Department of Human Services' caseloads and program utilization and the impact of federal health care reform.

The Legislative Management studied the state's qualified service provider system. The Legislative Management recommends the Legislative Assembly and the Department of Human Services establish a qualified service provider rate structure that provides additional funding for mileage.

The Legislative Management received reports from the Department of Human Services regarding the children's health insurance program, the status of the dementia care services program, the development of a new developmental disabilities reimbursement system, and the department's comprehensive review of the substance abuse services pilot voucher payment program.

INFORMATION TECHNOLOGY

The Legislative Management received reports from the Chief Information Officer and representatives of the Information Technology Department regarding the department's business plan; the department's annual report; statewide information technology policies, standards, and guidelines; major information technology projects; prioritization of major computer software projects for the 2013-15 biennium; the Statewide Longitudinal Data System Initiative; and health information technology activities. The Legislative Management also received reports from representatives of the University System regarding higher education information technology planning, services, and major projects and representatives of the Educational Technology Council regarding elementary and secondary education information technology initiatives.

The Legislative Management recommends:

- Senate Bill No. 2033 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.
- Senate Bill No. 2034 requiring an executive branch agency proposing a major information technology project to collaborate on the procurement, contract negotiation, and contract administration with the Information Technology Department, Office of Management and Budget, and the Attorney General and to create an executive steering committee for overseeing the project.

JUDICIARY

The Legislative Management studied the issue of juvenile court jurisdiction and the adult court transfer process and whether any additional juvenile court jurisdictional extensions would serve the best interests of the child and the public in cases in which the child is close to the age of majority. The Legislative Management recommends Senate Bill No. 2035, which provides the option of an extended juvenile jurisdiction proceeding for certain offenses.

The Legislative Management studied the statutes of limitation and venue requirements for civil actions in North Dakota, including a review of the limitation on the length of time that has passed since a cause of action arose and whether the time limitations in current law remain appropriate or should be changed, the extent to which claims are filed in North Dakota courts for claims

otherwise prohibited in other states due to the relevant statute of limitation having expired, and a review of the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state. The Legislative Management recommends House Bill No. 1042, which would provide that if none of the defendants in a civil case reside in the state, the action either must be brought in the county in which the plaintiff or one of the plaintiffs resides or in the county in which the cause of action arose.

The Legislative Management studied the feasibility and desirability of adopting the Uniform Electronic Recording of Custodial Interrogations Act. The Legislative Management makes no recommendation as a result of its study.

The Legislative Management studied the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming. The Legislative Management makes no recommendation as a result of its study.

The Legislative Management studied the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act. The Legislative Management makes no recommendation as a result of its study.

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

The Legislative Management recommends House Bill No. 1043 to make technical corrections throughout the Century Code.

The Legislative Management received the following five reports:

- 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.
- 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.
- A biennial report from the Racing Commission regarding the operation of the commission.
- A report from the director of the North Dakota Lottery regarding the operation of the lottery.
- 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.

LEGISLATIVE AUDIT AND FISCAL REVIEW

The Legislative Management received and accepted 177 audit reports prepared by the State Auditor's office and public accounting firms. Among the audit reports accepted were seven performance audits and evaluations--Dickinson State University, use of state-supplied vaccines by a provider, State Department of Health Family Health Division, fees charged at North Dakota State University and the University of North Dakota, Wildlife Services followup report, School of Medicine followup report, and Department of Commerce followup report.

The Legislative Management received the Department of Financial Institution's examination of the Bank of North Dakota.

The Legislative Management received information regarding Department of Human Services' accounts receivable writeoffs, discounting of oil produced on North Dakota lands, computer "shadow" systems being used at University System institutions, and whistleblower laws and rules.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Legislative Management approved arrangements for the 2013 legislative session. The Legislative Management approved various committee room renovations, including new committee room tables, committee room presentation equipment, chamber video and voting systems, and Harvest and Roughrider Rooms video and audio recording systems.

The Legislative Management also adopted policies relating to legislator data plan reimbursement, legislator use of personal computers, and legislator acquisition of replaced computers.

The Legislative Management recommends amendment of legislative rules to add a recording clerk position to the front desk force, eliminate the requirement to announce "and the title is agreed to" upon passage of a measure, provide for measures to be transmitted to the other house upon adjournment of the last session of the day, clarify placement of amended measures on the calendar for second reading and final passage, eliminate most copies of fiscal notes, and require recording of floor sessions and make those recordings available through the legislative branch website.

LEGISLATIVE REDISTRICTING

The Legislative Management studied redistricting and developed a legislative redistricting plan to be implemented in time for use in the 2012 primary election. The Legislative Management recommended to the Legislative Assembly at its November 2011 special session House Bill No. 1473 (2011) that established 47 legislative districts, required the Secretary of State to modify 2012 primary election deadlines and procedures if necessary, and provided an effective date of December 1, 2011.

NATURAL RESOURCES

The Legislative Management studied primacy in the administration of federal EPA regulations, potash mining and taxation issues, and various mechanisms for improving coordination and consultation regarding federal designations over land or water resources in North Dakota. The Legislative Management makes no recommendations as a result of these studies. The Legislative Management received a report from the Game

and Fish Department regarding the findings of its study of goose hunting in this state, tracking the number of resident and nonresident goose hunters, and the number of geese taken by county.

PROPERTY TAX MEASURE REVIEW

The Legislative Management studied the potential effects of initiated measure No. 2 appearing on the primary election ballot on June 12, 2012, to prohibit imposition of property taxes.

The Legislative Management received information regarding statewide property taxes, political subdivision bonded indebtedness, types of bonded indebtedness, property tax foreclosures, construction of an initiated measure, an Attorney General's opinion relating to the effective date of initiated measure No. 2, an analysis of the measure, and the estimated fiscal impact of the measure.

TAXATION

The Legislative Management studied property tax reform and relief. The Legislative Management recommends Senate Bill No. 2036 to provide property tax relief by appropriating $403 million for the 2013-15 biennium for allocation to school districts to reduce school district property taxes. The Legislative Management recommends Senate Bill No. 2037 to provide the same relief through allocations through school districts with additional provisions to allow school districts levying fewer than 185 mills in 2008 to increase property tax levies and obtain partial state matching funds for property tax relief. The Legislative Management recommends House Bill No. 1044 to provide a residential property tax credit for an individual's primary residence. The bill provides for state payment of property taxes on the first $75,000 of true and full valuation of the residence. For an individual 65 years of age or older, the credit is increased to cover taxes on the first $125,000 of true and full valuation of the residence. The credits provided are in addition to any homestead or disabled veteran's credit to which the homeowner is entitled. The bill appropriates $384 million for allocation of residential property tax credit funds to counties for the 2013-15 biennium. The Legislative Management recommends House Bill No. 1045 to provide property tax relief by appropriating $200 million for the 2013-15 biennium for allocation to counties to provide a 10 percent reduction in property taxes levied against all property by all taxing districts. The Legislative Management recommends Senate Bill No. 2038 to synchronize taxable years for mobile homes and real property. The Legislative Management recommends House Bill No. 1046 to allow a city or county to reduce or revoke a previously granted property tax exemption for a new or expanded business property if the city or county finds the property is not being used as intended when the exemption was granted.

The Legislative Management studied individual and corporate income tax credits, corporate income taxes, sales tax exemptions, the desirability of requiring use of cigarette tax stamps, and the desirability of oil extraction tax rate reductions and elimination of selected exemptions.

TRANSPORTATION

The Legislative Management studied the regulation of drivers and motor vehicles in the Century Code for consistency, clarity, and substance. The Legislative Management recommends Senate Bill No. 2039 to improve the consistency and clarity of Chapter 39-06 on operator's licenses and provide for fee consolidation. The Legislative Management recommends Senate Bill No. 2040 to consolidate the fees for commercial driver's licenses. The Legislative Management recommends Senate Bill No. 2041 to provide for the destruction of license plates for driving while under the influence and driving under suspension or revocation instead of impoundment. The Legislative Management recommends Senate Bill No. 2042 to prohibit the Department of Transportation from issuing a certificate of title or transferring a certificate of title to an out-of-state vehicle with a marked title. The Legislative Management recommends House Bill No. 1047 to make technical corrections to the International Registration Plan, the Unified Carrier Registration System, and the Single State Insurance Registration System. The Legislative Management recommends Senate Bill No. 2043 to define a Class III off-highway vehicle to include Argos and SnoBears and to prevent SnoBears from being registered as snowmobiles or operating on snowmobile trails. The Legislative Management recommends Senate Bill No. 2044 to provide consistency and clarity in Chapter 39-06.1, which relates to the disposition of traffic offenses, fees, and points for traffic offenses. The Legislative Management recommends House Bill No. 1048 to increase speeding fees. The Legislative Management recommends Senate Bill No. 2045 to transfer the regulation of commercial driver training schools from the Highway Patrol to the Department of Transportation. The Legislative Management recommends Senate Bill No. 2046 to make commercial driver's license laws consistent with federal regulations.

The Legislative Management studied the needs of, economic values of, and methods to improve access roadways to recreational, tourist, and historical sites in this state. The Legislative Management makes no recommendation as a result of its study.

The Legislative Management received a report from the Emergency Services Communications Coordinating Committee regarding the use of the assessed communications services fee revenue and received recommendations regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers. The Legislative Management recommends House Bill No. 1049 to delay the deadlines for public safety answering points by two years to the year 2015.

TRIBAL AND STATE RELATIONS

The Legislative Management conducted joint meetings with the Native American Tribal Citizens' Task Force. The Legislative Management studied corrections; taxation; education; the Commission to Study Racial and Ethnic Bias in the Courts; Heritage Center expansion; human services; child support enforcement; transportation; veterans; tourism; the Native American Commission;

economic development; environmental issues; and oil and gas exploration, production, and taxation.

The Legislative Management received the biennial report on the implementation of the oil and gas tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation.

The Legislative Management recommends House Bill No. 1050 to appropriate $500,000 from the general fund to the Superintendent of Public Instruction to develop and implement a pilot grant program for at-risk American Indian students and for the support of community-based services.

The Legislative Management recommends Senate Bill No. 2047 to extend the Committee on Tribal and State Relations through July 31, 2015.

WATER-RELATED TOPICS OVERVIEW

The Legislative Management reviewed the 2011 Mouse River flood, 2011 Missouri River flood, the Devils Lake flood of 2011, Fargo flood risk reduction, 2011 flood damage assessments, the structure of North Dakota water organizations and prioritization and funding of state water projects, the Red River Valley Water Supply Project, the Red River Basin Commission, the Western Area Water Supply Authority, the Southwest Water Authority, and the North Dakota Water Coalition. The Legislative Management studied the state's irrigation statutes.

The Legislative Management recommends Senate Bill No. 2048 to require the State Water Commission to develop policies governing allocation of funds from the resources trust fund.

The Legislative Management recommends Senate Bill No. 2049 to rename the Water-Related Topics Overview Committee the Water Topics Overview Committee and make it a permanent statutory committee, with responsibility to review the Garrison Diversion, clarify several irrigation law provisions and extend the expiration date of Garrison Diversion Conservancy District irrigation special assessments legislation for two years.

WORKERS' COMPENSATION REVIEW

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

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 recommendations based on the safety audit of the Roughrider Industries work programs and the performance review of the modified workers' compensation coverage program.

The Legislative Management recommends House Bill No. 1051 to provide for a Workers' Compensation Review Committee study of Workforce Safety and Insurance's designated medical provider program.

The Legislative Management recommends House Bill No. 1052 to strengthen an employer's duty to inform employees of the employer's decision to participate in the designated medical provider program.

The Legislative Management recommends House Bill No. 1053 to make more transparent a medical provider's professional relationship with Workforce Safety and Insurance. The bill provides if Workforce Safety and Insurance enters a professional relationship with a medical provider, one of the terms of that relationship is that at the time of treatment of a patient who is an injured employee, the medical provider has an obligation to inform that patient that the medical provider has a professional relationship with Workforce Safety and Insurance.

The Legislative Management recommends Senate Bill No. 2050 to provide if a permanent partial impairment determination is contested, the determination of the independent doctor is presumed if it is not more than and not less than the determinations of the injured employee's and Workforce Safety and Insurance's medical providers; however, if the independent doctor's determination is more than the injured employee's medical provider's determination, the presumed whole body impairment is the determination of the injured employee's medical provider, and if the independent doctor's determination is less than Workforce Safety and Insurance's medical provider's determination, the presumed whole body impairment is the determination of Workforce Safety and Insurance's medical provider.

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 a study to the committee. Senate Bill No. 2100 (2011) directed a study of statutory provisions setting compensation rates for members of executive branch boards and commissions to determine whether it may be desirable to standardize some or all of the compensation rate provisions.

Committee members were Representatives Kim Koppelman (Chairman), Bill Amerman, Tracy Boe, Randy Boehning, Duane DeKrey, Bill Devlin, Robert Frantsvog, Joe Kroeber, David Monson, Mike Schatz, Blair Thoreson, and Dwight Wrangham and Senators John M. Andrist, Layton Freborg, Joan Heckaman, Jerry Klein, and Margaret Sitte. Senator Tom Fischer served as a member of the committee until his death in November 2011.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

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 (NDAC).

Under NDCC Section 54-35-02.6, it is the standing duty of the Administrative Rules Committee to review administrative rules adopted under 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 the rules have a fiscal effect on state revenues and expenditures, including any effect

on funds controlled by the agency. Copies of any fiscal note are to be provided to the committee.

10. 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.
11. 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. If no representative of the agency appears before the committee to provide testimony, the rules are required by statute to be carried over for consideration and may be delayed in taking effect until a representative of the agency does appear before the committee.

Rules Notice Publication

The committee reviewed current newspaper notice publication costs. A representative of the North Dakota Newspaper Association informed the committee it is often difficult to fit the notice information in the statutory four inch column depth limitation. The committee concluded there is no substantial reason to limit the column depth of newspaper notices.

Committee Recommendation

The committee recommends House Bill No. 1024 to eliminate the statutory four inch maximum column depth restriction for newspaper publication of notice of administrative rulemaking.

CURRENT RULEMAKING STATISTICS

The committee reviewed 907 rules sections and 2,399 pages of rules that were changed from January 2011 through October 2012. Although there were substantially fewer sections reviewed, the rules comprised substantially more pages than during 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 NDAC 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
January 2011-October 2012	907

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
January 2011-October 2012	2,399

Rule Review Schedule

Since September 2005, NDAC supplements have been published on a calendar quarter basis. 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 NDAC 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

Rules of the Board of Social Work Examiners were carried over by statutory requirement because no representative of the agency was able to appear at the scheduled meeting. The committee received testimony from an agency representative at the subsequent meeting and took no action regarding the rules.

Rules of the Board of Psychologist Examiners were carried over for consideration. At the subsequent meeting of the committee, the committee approved recommended amendments offered by the Board of Psychologist Examiners after discussions with interested parties of issues raised by the committee.

At its final meeting before preparation of this report to the Legislative Management, the committee approved a motion to carry over consideration of a portion of rules of the State Procurement Office, Office of Management and Budget, relating to waiver of competitive bidding requirements for purchase of heating fuels, cement, sand, gravel, road oil, and bituminous mix and contracts for insurance through an independent broker, agent, or contractor. The committee requested assurance from the State Procurement Office that waiver of these competitive bidding requirements would not be a disadvantage to North Dakota businesses. The committee will reconsider the rules at its meeting in December 2012.

Rules Voided by Committee

The committee did not void any rules submitted by administrative agencies from January 2011 through October 2012.

STUDY OF BOARD AND COMMISSION MEMBER COMPENSATION

There never has been a standard compensation rate provided by law for daily compensation and per diem for members of boards and commissions. For many years, the practice prevailed of linking compensation of members of boards and commissions to the statutory daily compensation rate for legislators attending meetings of interim legislative committees. The practice became so prevalent that it became very difficult for the Legislative Assembly to change legislator compensation for interim committee meetings without also changing compensation for a very large number of board and commission members. This difficulty was addressed by enactment of 1997 Senate Bill No. 2052, which removed 37 statutory board and commission compensation links to the rate of $62.50 per day that was provided at that time for legislator interim committee compensation under NDCC Section 54-35-10. The bill removed the link by substituting the amount of $62.50 for the statutory link to Section 54-35-10. Many of these statutory compensation rates for boards and commissions still provide compensation of $62.50 per day for members. However, several boards and commissions have increased board member compensation or obtained legislative authority for changes to board and commission member compensation, in many cases to an increased compensation amount equal to what was at the time the amount provided for legislators for interim committee meetings.

Some boards and commissions have obtained statutory authorization to set member compensation by administrative rule. Under administrative rules, board member per diem compensation rates range from no compensation for the Board of Physical Therapy to $300 for members of the State Board of Accountancy.

Compensation rates set by statute for board and commission members range from $3 per day for Flood Irrigation Board members to $148 per day for the State Board of Higher Education, Teachers' Fund for Retirement Board, State Investment Board, and Public Employees Retirement System Board.

It appears the State Board of Nursing, Board of Pharmacy, and State Board of Medical Examiners have statutory authority to set compensation for members by board action, without setting a rate by statute or administrative rule.

Determining whether it is appropriate to establish uniform compensation rates for board and commission

member compensation is greatly complicated by unique circumstances of each board and commission. Some boards and commissions meet only sporadically, and others have frequent meetings. Financial resources available to boards and commissions for member compensation are probably the most significant limitation on member compensation. Members of some boards and commissions are compensated from funds appropriated by the Legislative Assembly. For occupational and professional licensing boards, funds available to the board or commission generally come almost entirely from licensing or registration fees paid by members of the profession. Willingness of members of the profession to accept higher fees is probably the most significant limiting factor on board and commission member daily compensation rates. For some boards and commissions, the board and commission member daily compensation and possibly compensation of an executive director and rental of office space are the most significant ongoing expenses. Other boards and commissions may have significant financial obligations for processing disciplinary complaints, compensating legal counsel, and other expenses unique to the board or commission.

Some members of the committee expressed the opinion that, because boards and commissions have unique circumstances, compensation for board and commission members should continue to be set on a case-by-case basis by seeking legislative authorization. Other committee members believe it may be feasible to find a means for uniform treatment of board and commission member compensation.

Conclusion

The committee makes no recommendation with regard to this study at the time of this report but intends to continue consideration of this issue at its December 2012 meeting.

TABLE A

Statistical Summary of Rulemaking
January 2011 Through October 2012 - Supplements 339 Through 346

NDAC Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
4	343 - JAN 12	Office of Management and Budget	14	0	0	0	0	0	14
	346 - OCT 12		5	2	0	0	0	0	7
10	339 - JAN 11	Attorney General	3	0	0	0	0	0	3
	340 - APR 11		3	0	0	0	0	0	3
	343 - JAN 12		6	0	0	0	0	0	6
	344 - APR 12		5	0	0	0	0	0	5
14	339 - JAN 11	Board of Barber Examiners	15	1	0	9	0	0	25
20	339 - JAN 11	State Board of Dental Examiners	15	15	0	2	0	0	32
24	339 - JAN 11	State Electrical Board	19	0	0	0	0	0	19
28	339 - JAN 11	State Board of Registration for Professional Engineers and Land Surveyors	1	0	0	0	0	0	1
32	343 - JAN 12	State Board of Cosmetology	19	0	0	0	0	0	19
33	339 - JAN 11	State Department of Health	29	28	0	7	0	0	64
	340 - APR 11		18	5	0	0	0	0	23
	341 - JUL 11		3	0	0	1	0	0	4
	343 - JAN 12		26	0	0	0	0	0	26
	344 - APR 12		38	8	0	0	0	0	46
43	344 - APR 12	Industrial Commission	20	5	0	0	0	0	25
45	345 - JUL 12	Insurance Commission	15	1	0	1	0	0	17
46	346 - OCT 12	Labor Department	3	0	0	0	0	0	3
48	339 - JAN 11	State Board of Animal Health	1	0	0	0	0	0	1
50	342 - OCT 11	State Board of Medical Examiners	2	0	0	0	0	0	2
54	340 - APR 11	Board of Nursing	28	5	0	0	0	0	33
	342 - OCT 11		14	0	0	6	0	0	20
	346 - OCT 12		2	0	0	0	0	0	2
55.5	341 - JUL 11	Board of Occupational Therapy Practice	2	0	0	0	0	0	2
61	339 - JAN 11	State Board of Pharmacy	0	1	0	0	0	0	1
	341 - JUL 11		8	1	0	0	0	0	9
	344 - APR 12		1	0	0	0	0	0	1
	346 - OCT 12		12	0	0	0	0	0	12
66	342 - OCT 11	State Board of Psychologist Examiners	6	2	0	6	0	0	14
	345 - JUL 12		18	2	0	0	0	0	20
67	345 - JUL 12	Department of Public Instruction	0	6	0	0	0	0	6
67.1	340 - APR 11	Education Standards and Practices Board	1	0	0	0	0	0	1
	345 - JUL 12		16	11	0	4	0	0	31
69	340 - APR 11	Public Service Commission	6	2	0	0	0	0	8
69.5	341 - JUL 11	North Dakota Racing Commission	17	5	0	2	0	0	24
	344 - APR 12		1	0	0	0	0	0	1
	346 - OCT 12		2	1	0	0	0	0	3
70	344 - APR 12	Real Estate Commission	1	1	0	0	0	0	2
71	344 - APR 12	Public Employees Retirement System	26	3	0	5	0	0	34
73	346 - OCT 12	Securities Commissioner	2	0	0	0	0	0	2
74	346 - OCT 12	State Seed Department	38	5	0	0	0	0	43
75	339 - JAN 11	Department of Human Services	31	1	0	0	0	0	32
	341 - JUL 11		11	0	0	0	0	0	11
	342 - OCT 11		30	0	0	0	0	0	30
	343 - JAN 12		12	1	0	0	0	0	13
	344 - APR 12		15	12	0	2	0	0	29
	345 - JUL 12		8	0	0	2	0	0	10
	346 - OCT 12		58	1	0	0	0	0	59
75.5	344 - APR 12	Board of Social Work Examiners	3	0	0	0	0	0	3
82	345 - JUL 12	Board of Trustees of the Teachers' Fund for Retirement	9	0	0	1	0	0	10
92	342 - OCT 11	Workforce Safety and Insurance	0	1	0	0	0	0	1
	344 - APR 12		16	2	0	0	0	0	18
95	344 - APR 12	Agricultural Products Utilization Commission	1	11	0	1	0	0	13
96	344 - APR 12	Board of Clinical Laboratory Practice	1	0	0	1	0	0	2
98	345 - JUL 12	Office of Administrative Hearings	4	1	0	0	0	0	5
99	345 - JUL 12	State Gaming Commission	34	6	0	0	0	0	40
101	345 - JUL 12	Real Estate Appraiser Qualifications and Ethics Board	13	4	0	0	0	0	17
Total			707	150	0	50	0	0	907

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 for in Section 3 of 2011 Senate Bill No. 2044, which provides for a study of motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. In addition to the study of motor vehicle permit fees, the commission addressed disaster response and recovery and liability related to disaster response, regulation of crew camps and group housing, and fire service training.

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 Representatives Lawrence R. Klemin (Chairman), Thomas R. Beadle, Ron Guggisberg, and Brenda Heller; North Dakota League of Cities representatives Don Frye and Shawn Kessel; North Dakota Association of Counties representatives Scott Ouradnik and Richard Riha; North Dakota Township Officers Association representative Kenneth Yantes; North Dakota Recreation and Park Association representative Ron Bieri, who served until the expiration of his term as a park commissioner, and Mike Schwartz who was appointed to replace Mr. Bieri; North Dakota School Boards Association representative Jon Martinson; and Governor's designee Brandi Pelham.

The commission submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

MOTOR VEHICLE PERMIT FEES STUDY

Section 3 of Senate Bill No. 2044 directed a study of motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. Senate Bill No. 2044 also amended Section 39-12-02 to provide that permit fees generated by a political subdivision must be deposited in the local authority's general fund for the support of the local road system.

Background

2011 Legislation

During the 2009-10 interim, the Public Safety and Transportation Committee examined issues related to overweight vehicles traveling on highways in the state. The committee received information indicating overweight vehicles significantly reduce the lifespan of roadways, and heavier vehicle axles reduce pavement life. According to information provided to the committee, a 36,000-pound axle weight does 24 times as much damage to roads as an 18,000-pound axle weight, and a 20,000-pound truck axle consumes 1,000 times as much pavement life as a 2,000-pound automobile axle. While North Dakota law limits maximum gross vehicle weight on highways in this state to 105,500 pounds unless posted for 80,000 pounds, the final report of the committee stated that highways in Canada have a maximum gross vehicle weight of 138,000 pounds, highways in Montana have a maximum gross vehicle weight of 131,000 pounds, highways in South Dakota have a maximum gross vehicle weight of 129,000 pounds, and highways in Minnesota have a maximum gross vehicle weight of 80,000 pounds for raw and unprocessed product but up to 90,000 pounds with a permit.

The committee received information regarding an Attorney General opinion issued in December 2009 which addressed the ability of a county to enact an overweight vehicle ordinance. The opinion concluded a county may enact a weight restriction ordinance, issue permits under the ordinance, and retain fees for a permit issued under the ordinance. However, the Attorney General concluded a county may not retain fines generated in enforcement of a violation of a weight restriction ordinance because Sections 39-12-02, 39-12-14.1, and 39-12-20 require permit and road use fees to be remitted to the state treasury for deposit in the

highway fund, which is a matter of statewide concern that may not be altered by a home rule ordinance.

The committee recommended 2011 House Bill No. 1042, which failed to pass the House of Representatives, and which would have required that extraordinary road use fee collections 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 would have provided 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 also recommended Senate Bill No. 2044 to provide that a violation of an overweight vehicle permit issued under a county home rule ordinance would be considered a violation of state law. The bill was amended and passed to provide that permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system. The bill further provided that for an overweight or oversize permit issued under state law, if the violation is of a permit issued by a county under a home rule ordinance or any city, including a home rule city, the statutory fee is for a violation of state law.

In addition to the bills recommended by the Public Safety and Transportation Committee, the Legislative Assembly in 2011 adopted four other bills relating to overweight and oversized vehicles. House Bill No. 1079 created separate weight limits for steering axles for the interstate highway system of 20,000 pounds or the axle rating established by the manufacturer, whichever is lower. House Bill No. 1082 allowed the Superintendent of the Highway Patrol and the Director of the Department of Transportation to enter cooperative regional permit agreements with any other state on regional operation or movement of nondivisible oversized or overweight vehicles. Senate Bill No. 2102 required extraordinary road use fees to be deposited with the State Treasurer and credited to the highway fund. House Bill No. 1254 allowed permits for overdimensional movements of vehicles that do not exceed 10 feet to travel during the day or night.

Statutory Vehicle Size and Width Limitations

Chapter 39-12 addresses size and width restrictions for vehicles on highways in the state. Under Section 39-12-01, the Director of the Department of Transportation, boards of county commissioners, and other bodies having control of roads are authorized to classify public highways and roads and establish weight and load limitations.

Section 39-12-02 authorizes the Highway Patrol and local authorities to issue a special permit authorizing the applicant to operate or move a vehicle, mobile home, or modular unit of a size or weight exceeding the maximum specified by Chapter 39-12, upon a highway under the jurisdiction of the body granting the permit. The permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting the permit. Section 39-12-02 authorizes the Highway Patrol and local authorities to adopt rules governing the movement of oversize and overweight vehicles. Subsection 3 of that section requires an appropriate charge must be made for each permit, and all funds collected by the Highway Patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the Department of Transportation. As described earlier, Senate Bill No. 2044 amended subsection 3 to provide that permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system.

Section 39-12-02(3), which establishes minimum permit fees and other allowable fees, provides:

a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.
b. The fee for a non-self-issuing interstate permit is ten dollars per trip or three hundred dollars per calendar year for unlimited trips.
c. The fee for special mobile equipment is twenty-five dollars per trip.
d. The fee for engineering is twenty-five dollars per trip.
e. The fee for faxing a permit is five dollars.
f. The fee for a single trip permit is twenty dollars per trip.
g. The fee for a bridge length permit is thirty dollars per trip or one hundred fifty dollars per calendar year.
h. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.
i. The fee for an overwidth vehicle or load that is fourteen feet six inches [4.42 meters] or less is twenty dollars per trip or one hundred dollars per calendar year unless the vehicle is a noncommercial fish house trailer being moved by the owner, then the fee is twenty dollars per calendar year.
j. If the highway patrol establishes an online electronic permit system, the highway patrol is to assess an additional fifteen dollar fee for every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.

Section 39-12-04 establishes width, height, and length limitations for vehicles operated on highways in the state. That section provides:

1. Vehicles operated on a highway in this state may not exceed a total outside

width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:

a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
b. Implements of husbandry being moved by resident farmers, ranchers, governmental entities, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, governmental entities, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.
c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, commercial movement of portable grain cleaners, commercial movement of forage harvesters, and the commercial movement of hay grinders, which may be moved on the highway after obtaining a seasonal permit issued by the highway patrol. The seasonal permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. All permit fees are to be deposited in the state highway distribution fund.
e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
f. Any nonload carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement of trailer width.

2. Vehicles operated on a highway in this state may not exceed a height of fourteen feet [4.27 meters], whether loaded or unloaded. This height limitation does not affect any present structure such as bridges and underpasses that are not fourteen feet [4.27 meters] in height. This limitation does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when:
   a. The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, dealer, or manufacturer;
   b. The trip is at most sixty miles [96.56 kilometers];
   c. The trip is between sunrise and sunset; and
   d. None of the trip is on an interstate highway.
3. A vehicle operated on a highway in this state may not exceed the following length limitations:
   a. A single unit vehicle with two or more axles including the load thereon may not exceed a length of fifty feet [15.24 meters].
   b. A combination of two units including the load thereon may not exceed a length of seventy-five feet [22.86 meters].
   c. A combination of three or four units including the load thereon may not exceed a length of seventy-five feet [22.86 meters], subject to any rules adopted by the director that are consistent with public highway safety. The rules do not apply to a three-unit combination consisting of a truck tractor and semitrailer drawing a trailer or semitrailer.
   d. A combination of two, three, or four units including the load thereon may be operated on all four-lane divided highways and those highways in the state designated by the director and local authorities as to the highways under their respective jurisdictions and may not exceed a length of one hundred ten feet [33.53 meters], subject to any rules adopted by the director that are consistent with public highway safety.
   e. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.5 meters] except that trailers and semitrailers titled and registered in North Dakota before July 1, 1987, and towed

vehicles may not exceed a length of sixty feet [18.29 meters].

4. Length limitations do not apply to:
   a. Building moving equipment.
   b. Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.
   c. Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.
   d. Structural material of telephone, power, and telegraph companies.
   e. Truck-mounted haystack moving equipment, provided the equipment does not exceed a length of fifty-six feet [17.07 meters].
   f. A truck tractor and semitrailer or truck tractor, semitrailer, and the trailer when operated on the interstate highway system or parts of the federal aid primary system as designated by the director, only when federal law requires the exemption.
   g. Safety and energy conservation devices and any additional length exclusive devices as determined by the highway patrol for the safe and efficient operation of commercial motor vehicles.
5. Motor homes, house cars, travel trailers, fifth-wheel travel trailers, camping trailers, and truck campers may exceed eight feet six inches [2.59 meters] in width if the excess is attributable to an appurtenance that extends beyond the body of the vehicle no more than six inches [15.24 centimeters] on either side of the vehicle.

Section 39-12-05 establishes weight restrictions for vehicles traveling on the interstate highway system. That section prohibits the operation on the interstate highway system in this state any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width except that such limits may not be applied to tires on the steering axle. Steering axle weights are limited to twenty thousand pounds [9071.85 kilograms] or the axle rating established by the manufacturer, whichever is lower. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle and, on axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle. The wheel load, in any instance, may not exceed one-half the allowable axle load.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W=500({}^{LN}/_{N-1} +12N + 36)$$

where W equals maximum weight in pounds carried on any group of more than one axle; L equals distance in feet between the extremes of any group of consecutive axles; and N equals number of axles in the group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds [15422.14 kilograms] each, providing the overall distance between the first and last axles of the consecutive sets of tandem axles is at least thirty-six feet [10.97 meters]. The gross weight may not exceed eighty thousand pounds [36287.39 kilograms].

Section 39-12-05.3 establishes weight limitations for vehicles on highways other than the interstate highway system. That section provides:

1. A person may not operate on a highway that is not part of the interstate system any vehicle with a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed nineteen thousand pounds [8618.26 kilograms] per axle, with a maximum of thirty-four thousand pounds [15422.14 kilograms] gross weight on a tandem axle and a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, a person may not operate on a highway that is not part of the interstate system any vehicle the gross weight of which exceeds that determined by the formula of:

$$W=500({}^{LN}/_{N-1} + 12N + 36)$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms].

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority is to establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol is to issue the permits authorized by the director.
5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority is to establish an appropriate fee for the permits and direct how they are to be issued. The highway patrol is to issue the permits authorized by the director.
6. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled fertilizer spreader or a self-propelled agricultural chemical applicator if the weight of a single axle does not exceed twenty-two thousand pounds [9973.03 kilograms] and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The highway patrol is to issue a seasonal permit for the commercial movement of vehicles exempted by this subsection.
7. The weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption but the weight limitations in section 39-12-05 do apply to that equipment. For every vehicle approved for exemption, the highway patrol is to issue a nontransferable bridge length permit valid for a single trip or a calendar year.

Section 39-12-06 prohibits the operation on a highway of a motor vehicle carrying any load beyond the lines of the left fenders of the vehicle nor extending more than 12 inches beyond the line of the fenders on the right side of the vehicle unless permitted by Section 39-12-04.

Section 39-12-08 provides that the penalty for operating an overweight or oversized vehicle without a permit is a fee of $100. The penalty for any other violation for which a specific penalty is not provided is a fee of $20. The section, as amended by Senate Bill No. 2044 also provides that for a permit allowed under Chapter 39-12, if the violation is of a permit issued by a county under a home rule ordinance or any city, including a home rule city, the statutory fee is for a violation of state law in an amount provided by Section 39-12-08. Pursuant to Section 29-27-02.1, unless otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws are to be deposited in the common schools trust fund. Section 15.1-28-01 provides that the net proceeds of the fines constitute the state tuition fund.

Chapter 39-12 also provides procedures of impoundment of overweight vehicles. Section 39-12-11 states that a vehicle found to have been moved or used upon any highway, street, or road in this state at a weight exceeding the limitations as specified in any order, ordinance, or resolution issued under Section 39-12-03 or as limited by Section 39-12-05 may be impounded by any peace officer and taken to a warehouse or garage for storage. Under Section

39-12-14, the state's attorney of the county in which a vehicle is impounded is required to file a civil complaint on behalf of the authority having jurisdiction of the road on which a violation occurred, for the purpose of recovering charges for the extraordinary use of the highway. However, Section 39-12-14.1 provides that before a complaint is issued, the owner, or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided under section 39-12-17, plus any towing or storage costs. The extraordinary road use fees must be deposited with the State Treasurer to be credited to the highway fund.

Section 39-12-17 sets forth the charges that must be assessed as extraordinary road fees. That section provides that in addition to storage costs and the costs of the action, the following fees must be assessed:

1 to 1,000 pounds [.45 to 453.59 kilograms] of excess weight = $20

1,001 to 2,000 pounds [454.05 to 907.18 kilograms] of excess weight = $40

2,001 to 3,000 pounds [907.64 to 1360.78 kilograms] of excess weight = $60

3,001 to 4,000 pounds [1361.23 to 1814.37 kilograms] of excess weight = $140

4,001 to 5,000 pounds [1814.82 to 2267.96 kilograms] of excess weight = $220

5,001 to 6,000 pounds [2268.41 to 2721.55 kilograms] of excess weight = $305

6,001 to 7,000 pounds [2722.01 to 3175.14 kilograms] of excess weight = $380

7,001 to 8,000 pounds [3175.60 to 3628.74 kilograms] of excess weight = $495

8,001 to 9,000 pounds [3629.19 to 4082.33 kilograms] of excess weight = $575

9,001 to 10,000 pounds [4082.78 to 4535.92 kilograms] of excess weight = $655

10,001 to 11,000 pounds [4536.37 to 4989.51 kilograms] of excess weight = $1,100

11,001 to 12,000 pounds [4989.97 to 5443.10 kilograms] of excess weight = $1,200

12,001 to 13,000 pounds [5443.56 to 5896.70 kilograms] of excess weight = $1,300

13,001 to 14,000 pounds [5897.15 to 6350.29 kilograms] of excess weight = $1,680

14,001 to 15,000 pounds [6350.74 to 6803.88 kilograms] of excess weight = $1,800

15,001 to 16,000 pounds [6804.33 to 7257.47 kilograms] of excess weight = $1,920

16,001 to 17,000 pounds [7257.93 to 7711.06 kilograms] of excess weight = $2,550

17,001 to 18,000 pounds [7711.52 to 8164.66 kilograms] of excess weight = $2,700

18,001 to 19,000 pounds [8165.11 to 8618.25 kilograms] of excess weight = $2,850

19,001 to 20,000 pounds [8618.70 to 9071.84 kilograms] of excess weight = $3,000

20,001 to 21,000 pounds [9072.29 to 9525.43 kilograms] of excess weight = $4,200

21,001 to 22,000 pounds [9525.89 to 9979.02 kilograms] of excess weight = $4,400

22,001 to 23,000 pounds [9979.48 to 10432.62 kilograms] of excess weight = $4,600

23,001 to 24,000 pounds [10433.07 to 10886.21 kilograms] of excess weight = $4,800

24,001 to 25,000 pounds [10886.66 to 11339.80 kilograms] of excess weight = $5,000

25,001 to 26,000 pounds [11340.25 to 11793.40 kilograms] of excess weight = $5,200

26,001 to 27,000 pounds [11793.86 to 12246.99 kilograms] of excess weight = $5,400

27,001 to 28,000 pounds [12247.45 to 12700.59 kilograms] of excess weight = $5,600

28,001 to 29,000 pounds [12701.04 to 13154.18 kilograms] of excess weight = $5,800

29,001 to 30,000 pounds [13154.63 to 13607.77 kilograms] of excess weight = $6,000

An additional charge of $200 for every 1,000-pound [453.59-kilogram] increase over 30,000 pounds [13607.77 kilograms] consistent with the above formula.

Section 39-12-18 requires a judge to order the confiscation of the vehicle if the charges and costs as provided in Section 39-12-17 are not paid immediately from a cash bond previously posted or other cash payment, and the vehicle may be sold by the sheriff of the county at a public sale to the highest bidder with the proceeds applied to the payment of the charges and costs assessed.

Section 39-12-20 provides the proceeds of sale must be deposited with the State Treasurer, and the State Treasurer is required to deposit in the highway fund an amount equal to the amount of the charges assessed under Section 39-12-17 after paying the costs to the county.

Testimony and Commission Considerations

The commission received testimony from representatives of the North Dakota Uniform County Permit System which issues oversize and overweight permits for 17 counties that are members of the North Dakota Association of Oil and Gas Producing Counties. Under the system, the owner or operator of a truck may self-issue or order an online permit for an oversize or overweight truck to operate on a county road in a participating county. Although the permits are centrally

issued, each participating county is responsible for collecting the funds due for the permits issued. The testimony indicated the number of permits issued and the amount of fees collected were increasing significantly as energy development in the participating counties increased. During the period from July 1, 2009, to June 30, 2010, approximately 37,000 permits were issued and nearly $1.5 million in fees were collected. During the period from July 1, 2010, to June 30, 2011, over 50,000 permits were issued and over $2.1 million in fees were collected. Although the counties participating in the system retained the permit fees and were able to use the fees to mitigate some of the damage done to county roads, the testimony indicated the amount of damage to county roads has been significantly greater than the amount of fees recovered through the issuance of permits. There was testimony suggesting that because state officials have denied permits to operate very large vehicles on state highways, that traffic has been diverted to county roads. In addition, because the $100 fine for operating an overweight vehicle is viewed by many to be insignificant and a cost of doing business and because it is difficult for law enforcement to devote resources to enforce load restrictions, many truck owners and operators have chosen to continue to take the risk of transporting overweight loads without a permit and pay the fine if caught.

The commission received testimony from representatives of the Highway Patrol regarding the dramatic increase in the number of oversize and overweight vehicle permits issued and in the collection of extraordinary road use fees from operators of oversize or overweight vehicles. Data provided by the Highway Patrol indicated the amount collected in permit fees and civil penalties increased from approximately $5.8 million in fiscal year 2009 to approximately $7.5 million in fiscal year 2010 and to approximately $11.7 million in 2011. Of those amounts, the extraordinary road fees collected were slightly less than $500,000 in 2009, approximately $500,000 in 2010, and over $1.2 million in 2011. The amount of extraordinary road use fees collected by the Highway Patrol in 2012 increased to nearly $3 million. Although about two-thirds of the fees collected in 2012 were collected from operators of vehicles being operated on state highways, approximately $840,000 was collected from operators of vehicles being operated on county roads. In response to requests for additional enforcement, in part due to a lack of local government resources, the Highway Patrol has added weight and inspection stations and equipped troopers with over 200 portable scales, as well as dedicating 25 troopers to enforcing load restrictions.

Testimony from representatives of counties contended that while county roads are suffering significant damages and extraordinary road use fees are intended to pay for damages done to roads, the state receives the benefit of local and state enforcement of size and weight restrictions because the extraordinary road use fees are required to be deposited in the state highway fund. In addition to the resources local law enforcement officers devote to enforcing size and weight restrictions, states' attorneys are responsible for collection procedures through civil actions if the fees are not paid voluntarily.

The commission considered a bill draft to allow counties to retain extraordinary road use fees collected in that county for the support of the county road system, to establish a process to review county excessive size and weight regulation enforcement, to require the Director of the Department of Transportation to conduct semiannual reviews of the performance of each county's enforcement of oversize and overweight vehicle regulations, and to allow the Director to order the State Treasurer to withhold monthly distributions of funds from the highway tax distribution fund to a county that has failed to appropriately enforce the regulations until the county has submitted a plan for remedying any deficiencies identified by the Director.

Proponents of the bill draft contended that allowing each county to retain extraordinary road use fees collected in the county is a matter of fairness in that the fees could be used to mitigate road damages in the county in which the damages occur. In addition, they argued that by requiring that the fees be used for county road purposes, the concerns expressed during the 2011 legislative session with respect to House Bill No. 1042 which would have provided that extraordinary road use fees would be deposited in the county general fund, would be alleviated. Because township and city roads are also being damaged by overweight vehicles, supporters of the bill draft argued that the draft should allow townships and cities to retain extraordinary road use fees collected on township and city roads to be used for township and city road purposes. Proponents of the bill draft contended the provisions of the bill draft relating to semiannual reviews of the performance of county enforcement were unnecessary. Representatives of the Department of Transportation expressed support for the concept of allowing local governments to retain the extraordinary road use fees collected on local roads, but were not supportive of the provisions of the bill draft which required the Director of the department to provide oversight of local enforcement efforts.

A representative of the North Dakota Farm Bureau testified in opposition to the bill draft, arguing that allowing counties to retain extraordinary road use fees would lead to overzealous enforcement as a means to raise revenue for counties and if county officials were only concerned with road damage, counties would enforce weight restrictions without remuneration. The opponent of the bill draft argued that the low level of enforcement by counties indicates that there is not a serious problem with roads being damaged.

Recommendation

The commission recommends Senate Bill No. 2025 to provide that extraordinary road use fees for a violation that did not occur on an interstate or a state highway must be deposited in the general fund of the jurisdiction having authority over the road on which the violation occurred and must be used for the support of the road system of that jurisdiction. The bill would be effective through June 30, 2017.

DISASTER RESPONSE AND RECOVERY AND LIABILITY STUDY

Testimony and Commission Considerations

The commission received testimony from a representative of the Department of Emergency Services regarding legislation adopted during the special legislative session held in November 2011. The Legislative Assembly adopted Senate Bill No. 2371 which established a Rebuilders Loan Program and which appropriated additional funds for disaster relief and recovery. The testimony suggested Senate Bill No. 2371 was intended to be a bridge to the 2013 legislative session to address disaster response and recovery costs incurred during 2011. The bill also required the Department of Emergency Services to coordinate an executive branch study of flood response measures and coordination of state, local, and federal resources to mitigate future flooding in the state. The bill required the department to utilize all relevant executive branch resources in conducting the study and provided the study must include potential flood plain building restrictions, establishment of permanent levees and diversion works, financial institution lending policies, Bank of North Dakota and Housing Finance Agency acquisition of secondary market loans regarding flood insurance requirements for housing, and any other flood insurance issues affecting property owners in the state.

Testimony from the representative of the Department of Emergency Services also addressed areas of concern which had been identified during disaster response and recovery operations in 2011. The testimony indicated there were problems with evacuations during certain disaster situations which will be addressed in the study being undertaken by the department. In addition, an unmet needs committee was established to examine programs that will not duplicate federal disaster relief programs but which will attempt to provide assistance to individuals and businesses suffering losses due to a declared disaster.

The testimony from the representative of the Department of Emergency Services suggested authorized uses of the state disaster relief fund and liability for property damaged during disaster response actions may merit further study. Although Section 37-17.1-12 authorizes the payment of compensation for property if the property was commandeered or otherwise used in management of a disaster or emergency declared by the Governor and its use or destruction was ordered by the Governor, the commission was informed that no claims have been paid under that authorization. In addition, the testimony indicated no money has been appropriated to pay claims.

In discussing the compensation provisions of Section 37-17.1-12, the absence of funds to provide compensation, and other provisions of Chapter 37-17.1 which provide immunity from most liability resulting from disaster response activities, some members of the commission contended the compensation provisions are meaningless if the grants of immunity are too expansive and no funds are available to pay claims. The commission considered a bill draft to remove the requirement that the destruction of property must be ordered by the Governor to allow a property owner to be eligible for compensation if property is commandeered or used in management of a disaster or emergency declared by the Governor; to expand the authorized uses of the state disaster relief fund to include the payment of any expenses incurred under Chapter 37-17.1; to limit immunity in disaster response activities to individuals, rather than providing immunity to the state and political subdivisions; and to eliminate immunity for property owners permitting the use of real property for emergency management activities if the property owner has been grossly negligent.

Although there was no testimony in opposition to the bill draft, concerns were expressed regarding the potential for exposing a property owner to liability when the property owner has had the property commandeered for use during an emergency response. Although concerns were expressed with respect to the ability of small political subdivisions to pay the costs of any damages incurred while responding to a disaster or emergency, a representative of the Department of Emergency Services contended the bill draft should be clear in that the governmental entity that caused damage should be responsible for that damage.

Proponents of the bill draft argued that absolute immunity is unreasonable and individuals who suffer damage due to negligent actions should have some recourse to recover damages, particularly because most insurance companies will not cover damages incurred during a disaster or emergency situation. The proponents of the bill draft also argued the state disaster relief fund should be used to provide funds for payment of damages incurred during disaster and emergency responses as a result of actions taken by entities of the state.

Recommendation

The commission recommends House Bill No. 1025 to remove the requirement that the destruction of property must be ordered by the Governor to allow a property owner to be eligible for compensation if property is commandeered or used in management of a disaster or emergency; to expand the authorized uses of the state disaster relief fund to include the payment of any expenses incurred under Chapter 37-17.1; to limit immunity in disaster response activities to individuals, rather than providing immunity to the state and political subdivisions; and to eliminate immunity for property owners permitting the use of real property for emergency management activities if the property owner has been grossly negligent.

CREW CAMP AND GROUP HOUSING REGULATION STUDY

Testimony and Commission Considerations

As a result of increased energy development, the population of the western portion of the state has increased dramatically and is expected to continue to increase. To accommodate the influx of new residents to the state, many businesses and individuals have established crew camps or group housing facilities. Many of the crew camps or group housing facilities have

been built in rural areas that often lack the infrastructure to handle the increased population. To respond to the increased growth of crew camps and group housing facilities, many cities and counties considered or adopted crew camp or group housing regulations or placed moratoriums on the further development of crew camps or group housing facilities.

The commission received testimony indicating the regulation of the establishment of crew camps or group housing facilities is important for public safety reasons. Because most of the rural areas in which crew camps and group housing facilities have been established do not have the necessary infrastructure to provide adequate public services such as water and sewer service, building inspection services, and fire and police services, there have been concerns expressed regarding the health and safety of residents of the facilities as well as the local communities. The lack of official street addresses in some areas in which facilities have been established has posed problems for law enforcement and emergency responders. Also, concerns were expressed regarding sexual offenders moving into rural areas in which there may not be adequate resources to protect the public safety.

The commission received testimony suggesting there are essentially two types of group housing--closed housing, which is either group housing leased to tenants in which the management of the group housing may also provide food service, laundry facilities, and other amenities or group housing provided by a company solely to its employees in which the company also provides similar services and open housing in which recreational vehicles, manufactured homes, or other mobile units may be located together. The testimony indicated the closed housing type is preferable in that it generally is well regulated by the owner of the facilities while open housing generally is not well regulated, likely does not provide necessary infrastructure such as water and sewer service, and often is difficult to locate in the event of an emergency call.

Although several cities and counties have adopted ordinances regulating crew camps and group housing, the commission received testimony indicating many of the smaller political subdivisions do not have adequate building inspectors or code enforcement officials to properly provide oversight of the facilities. However, it was reported that many of the larger, well-run facilities have worked closely with local officials to ensure the safety of the residents of the facilities and the local residents.

Members of the commission discussed the possibility of drafting a model ordinance that may be used by local governing bodies when considering enacting regulations for crew camps and group housing facilities. However, after cities and counties in the western and central portion of the state were surveyed regarding the adoption of ordinances regulating crew camps and group housing facilities, it appeared there may not be a need for a model ordinance, but there may be a need for a central repository of adopted ordinances. Therefore, the commission requested the Legislative Council office to maintain a file of crew camp and group housing ordinances and encouraged local officials to file regulatory ordinances with the Legislative Council office.

The commission considered a resolution draft to direct a Legislative Management study of issues related to development of group housing and crew camps, including infrastructure demands, health and safety requirements, regulation, and enforcement of regulatory violations. Proponents of the resolution draft contended further study of the issues related to the development of group housing and crew camps during the next interim would assist local governments in addressing emerging issues related to the continued growth in the state and the need for safe and affordable housing.

Recommendation

The commission recommends House Concurrent Resolution No. 3001 to provide for a Legislative Management study of issues related to development of group housing and crew camps, including infrastructure demands, health and safety requirements, regulation, and enforcement of regulatory violations.

FIRE SERVICE TRAINING STUDY

Testimony and Commission Discussion

The commission received testimony regarding needs assessments of fire departments in North Dakota resulting from a survey conducted in 2010 by the National Fire Protection Association. The assessment indicated that of the responding departments:

- Ninety-one percent do not have enough portable radios to equip all emergency responders on a shift.
- Eighty-eight percent are unable to equip all firefighters on a shift with self-contained breathing apparatus.
- Eighty-two percent do not have enough personal alert safety system devices to equip all emergency responders on a shift.
- Nineteen percent are unable to provide all emergency responders with their own personal protective clothing.
- Ninety-seven percent of those responsible for structural firefighting have not formally trained all personnel involved in structural firefighting.
- Seventy percent of those responsible for emergency medical service have not formally trained all personnel involved in emergency medical service.
- Eighty percent have no program to maintain basic firefighter fitness and health.

The commission was informed that the survey results relating to the training of firefighters were worse than the 2001 and 2005 needs assessments, which ranked this state last in the country. Testimony regarding the training of firefighters suggested the deficiencies in training are related largely to a lack of financial resources and the inability of firefighters, especially volunteer firefighters, to attend the one statewide fire school offered annually.

The commission received testimony regarding the impact of growth related to energy development on fire

services in the state. Because of the substantial increase in the volume of automobile traffic, including trucks hauling crude oil, there has been a significant increase in automobile accidents that require emergency response from fire services. In addition, because fire departments have had to respond to fires and explosions involving oil rigs, firefighters are in need of specialized training to address the unique challenges presented by oil rig fires and explosions. Although fire departments in rural areas generally have not been equipped to respond to fires that require the use of ladder trucks, the increase in the number of multistory buildings being built in rural communities is resulting in the need to purchase ladder trucks which can cost approximately $900,000.

The commission received testimony regarding the distribution of funds to fire departments from the insurance tax distribution fund. The amount of distributions to fire departments from the insurance tax distribution fund has been at the same level since 2005 despite the amount of premiums being deposited in the fund increasing substantially.

Conclusion

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

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned one study. House Concurrent Resolution No. 3001 (2011) directed a continued 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. The committee was also 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 Senators Robert Erbele (Chairman), Bill Bowman, Tim Flakoll, Oley Larsen, Larry Luick, Philip M. Murphy, Curtis Olafson, Donald Schaible, and Gerald Uglem and Representatives Michael D. Brandenburg, Tom Conklin, Dennis Johnson, Joyce Kingsbury, Phillip Mueller, Wayne Trottier, and John D. Wall.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd 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. In 2007, against this backdrop, 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, the committee determined that the nature and extent of the rewrite made amending current sections of the North Dakota Century Code virtually impossible. The committee 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 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.

Of the 16 members appointed to the 2011-12 Agriculture Committee, 10 had served on either the first or the second phase of the rewrite. They too elected to continue using the rewrite process with which they were familiar and imposed the same parameters as were articulated by their predecessors. The 2011-12 committee completed the rewrite of the state's seed laws by addressing the North Dakota Century Code chapters pertaining to seed potato certification and seed potato control areas. In addition, the committee rewrote the North Dakota Century Code chapters pertaining to livestock branding, estrays, livestock dealers, and wool dealers.

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 Potato Certification	
4-10-01.1	Unnecessary
4-10-03	Unnecessary
4-10-06.5	Unnecessary
4-10-08	Repealed in 1981
4-10-09	Unnecessary
4-10-11	Repealed in 2007
4-10-13	Repealed in 1981
4-10-16	Repealed in 1981
4-10-17	Unnecessary
4-10-20	Unnecessary
4-10-21	Unnecessary
Seed Potato Control Areas	
4-26-01	Unnecessary
Livestock Dealers and Wool Dealers	
36-04-06	Repealed in 1975
36-04-07.1	Unnecessary
36-04-08	Repealed in 1973
36-04-09	Unnecessary
36-04-10.1	Unnecessary
36-04-11.1	Unnecessary
Branding	
36-09-03	Repealed in 2003
36-09-05	Repealed in 1989
36-09-07	Repealed in 1949
36-09-09	Repealed in 2005
36-09-16	Repealed in 1975
36-09-21	Repealed by omission from code prior to 1972

Subject - Section	Rationale for Omission
Estrays	
36-13-03	Repealed in 2003
Estray Inspection	
36-22-01	Unnecessary
36-22-05	Repealed in 1999

Cross-Reference Table - Current Sections

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

Current Section	Proposed Section
Seed Potato Certification	
4-10-01	4.1-55-01
4-10-02	4.1-52-07
	4.1-55-02
4-10-04	4.1-55-03
4-10-05	4.1-55-04
	4.1-55-05
	4.1-55-14
4-10-06	4.1-52-09
4-10-06.1	4.1-55-05
4-10-06.2	4.1-55-06
4-10-06.3	4.1-55-07
4-10-06.4	4.1-55-08
4-10-07	4.1-55-09
4-10-10	4.1-55-10
4-10-12	4.1-55-11
4-10-12.1	4.1-55-12
4-10-14	4.1-55-14
4-10-15	4.1-55-15
4-10-18	4.1-52-10
4-10-19	4.1-55-16
4-10-22	4.1-55-17
4-10-23	4.1-55-13
Seed Potato Control Areas	
4-26-02	4.1-56-01
4-26-03	4.1-56-02
4-26-04	4.1-56-03
4-26-05	4.1-56-04
4-26-06	4.1-56-05
4-26-07	4.1-56-06
	4.1-56-07
	4.1-56-09
4-26-08	4.1-56-11
4-26-09	4.1-56-08
	4.1-56-09
4-26-10	4.1-56-10
4-26-11	4.1-56-12
4-26-12	4.1-56-13
Seed Department	
4.1-53-02	4.1-52-01
4.1-53-03	4.1-52-02
4.1-53-04	4.1-52-03
4.1-53-05	4.1-52-04
4.1-53-06	4.1-52-05
4.1-53-07	4.1-52-06
4.1-53-08	4.1-52-07
4.1-53-09	4.1-52-08
4.1-53-10	4.1-52-09
4.1-53-11	4.1-52-10
4.1-53-62	4.1-52-11
4.1-57-20	4.1-52-11
4.1-57-21	4.1-52-10

Current Section	Proposed Section
Livestock Dealers and Wool Dealers	
36-04-01	4.1-83-01
	4.1-88-01
36-04-02	4.1-83-02
	4.1-88-02
36-04-03	4.1-83-13
	4.1-83-14
	4.1-83-15
	4.1-83-16
	4.1-88-12
	4.1-88-13
	4.1-88-14
	4.1-88-15
36-04-04	4.1-83-02
	4.1-83-03
	4.1-83-10
	4.1-88-02
	4.1-88-03
	4.1-88-09
36-04-05	4.1-83-05
	4.1-83-07
	4.1-83-08
	4.1-88-05
	4.1-88-06
	4.1-88-07
36-04-05.1	4.1-83-09
	4.1-88-08
36-04-07	4.1-83-04
	4.1-83-06
	4.1-88-04
36-04-09.1	4.1-83-17
	4.1-88-16
36-04-09.2	4.1-83-18
	4.1-88-17
36-04-10	4.1-83-10
	4.1-83-19
	4.1-88-09
	4.1-88-18
36-04-11	4.1-83-20
	4.1-88-19
36-04-12	4.1-83-21
	4.1-88-20
36-04-13	4.1-83-22
	4.1-88-21
36-04-14	4.1-83-23
	4.1-88-22
36-04-15	4.1-83-24
	4.1-88-23
36-04-16	4.1-83-25
	4.1-88-24
36-04-17	4.1-83-26
	4.1-88-25
36-04-18	4.1-83-27
	4.1-88-26
36-04-19	4.1-83-28
	4.1-88-27
36-04-20	4.1-83-29
	4.1-88-28
36-04-21	4.1-83-30
	4.1-88-29
Branding	
36-09-01	4.1-72-03
36-09-02	4.1-73-02
	4.1-73-05
	4.1-73-06
	4.1-73-07

Current Section	Proposed Section
36-09-02.1	4.1-73-03
	4.1-73-13
36-09-04	4.1-73-04
	4.1-73-26
36-09-06	4.1-73-09
36-09-08	4.1-73-28
36-09-09.1	4.1-73-10
	4.1-73-11
36-09-10	4.1-73-15
36-09-11	4.1-73-11
36-09-12	4.1-73-12
36-09-13	4.1-73-14
36-09-13.1	4.1-73-16
36-09-14	4.1-73-27
36-09-15	4.1-73-25
36-09- 17	4.1-73-17
36-09-18	4.1-72-04
	4.1-72-07
36-09-19	4.1-73-29
36-09-20	4.1-73-18
36-09-20.1	4.1-73-20
36-09-20.2	4.1-73-19
36-09-22	4.1-74-01
36-09-23	4.1-73-21
36-09-24	4.1-72-04
36-09-25	4.1-72-05
36-09-26	4.1-73-23
36-09-27	4.1-73-22
36-09-28	4.1-72-06
Estrays	
36-13-01	4.1-75-02
	4.1-75-03
36-13-02	4.1-75-04
36-13-03.1	4.1-75-02
36-13-04	4.1-75-05
36-13-05	4.1-75-06
36-13-06	4.1-75-02
36-13-07	4.1-75-08
36-13-08	4.1-75-09
Estray Inspection	
36-22-02	4.1-72-01
36-22-03	4.1-73-24
36-22-04	4.1-75-06
36-22-06	4.1-75-07
36-22-07	4.1-75-07
36-22-08	4.1-75-07
36-22-08.1	4.1-72-07
36-22-09	4.1-72-08

Cross-Reference Table - Proposed Sections to Current Sections

Seed Department	
4.1-52-01	4.1-53-02
4.1-52-02	4.1-53-03
4.1-52-03	4.1-53-04
4.1-52-04	4.1-53-05
4.1-52-05	4.1-53-06
4.1-52-06	4.1-53-07
4.1-52-07	4-10-02
	4.1-53-08
4.1-52-08	4.1-53-09
4.1-52-09	4-10-06
	4.1-53-10
4.1-52-10	4-10-18
	4.1-53-11
	4.1-57-21
4.1-52-11	4.1-53-62
	4.1-57-20
Seed Potato Certification	
4.1-55-01	4-10-01
4.1-55-02	4-10-02
4.1-55-03	4-10-04
4.1-55-04	4-10-05
4.1-55-05	4-10-06.1
4.1-55-06	4-10-06.2
4.1-55-07	4-10-06.3
4.1-55-08	4-10-06.4
4.1-55-09	4-10-07
4.1-55-10	4-10-10
4.1-55-11	4-10-12
4.1-55-12	4-10-12.1
4.1-55-13	4-10-23
4.1-55-14	4-10-05
	4-10-14
4.1-55-15	4-10-15
4.1-55-16	4-10-19
4.1-55-17	4-10-22
Seed Potato Control Areas	
4.1-56-01	4-26-02
4.1-56-02	4-26-03
4.1-56-03	4-26-04
4.1-56-04	4-26-05
4.1-56-05	4-26-06
4.1-56-06	4-26-07
4.1-56-07	4-26-07
4.1-56-08	4-26-09
4.1-56-09	4-26-07
	4-26-09
4.1-56-10	4-26-10
4.1-56-11	4-26-08
4.1-56-12	4-26-11
4.1-56-13	4-26-12
Wholesale Potato Dealers	
4.1-57-18.1	4-10-12.1
North Dakota Stockmen's Association	
4.1-72-01	36-22-02
4.1-72-02	36-09-18
4.1-72-03	36-09-01
4.1-72-04	36-09-24
4.1-72-05	36-09-25
4.1-72-06	36-09-28
4.1-72-07	36-09-18
	36-22-08.1
4.1-72-08	36-22-09
Branding	
4.1-73-01	New section
4.1-73-02	36-09-02
4.1-73-03	36-09-02.1
4.1-73-04	36-09-04
4.1-73-05	36-09-02
4.1-73-06	36-09-02
4.1-73-07	36-09-02
4.1-73-08	New section
4.1-73-09	36-09-06
4.1-73-10	36-09-09.1
4.1-73-11	36-09-09.1
	36-09-11
4.1-73-12	36-09-12
4.1-73-13	36-09-02.1
4.1-73-14	36-09-13
4.1-73-15	36-09-10
4.1-73-16	36-09-13.1

4.1-73-17	36-09-17
4.1-73-18	36-09-20
4.1-73-19	36-09-20.2
4.1-73-20	36-09-20.1
4.1-73-21	36-09-23
4.1-73-22	36-09-27
4.1-73-23	36-09-26
4.1-73-24	36-22-03
4.1-73-25	36-09-15
4.1-73-26	36-09-04
4.1-73-27	36-09-14
4.1-73-28	36-09-08
4.1-73-29	36-09-19
Registered Livestock	
4.1-74-01	36-09-22
Estrays	
4.1-75-01	New section
4.1-75-02	36-13-01
	36-13-03.1
	36-13-06
4.1-75-03	36-13-01
4.1-75-04	36-13-02
4.1-75-05	36-13-04
4.1-75-06	36-13-05
	36-22-04
4.1-75-07	36-22-06
	36-22-07
	36-22-08
4.1-75-08	36-13-07
4.1-75-09	36-13-08
Livestock Dealers	
4.1-83-01	36-04-01
4.1-83-02	36-04-02
	36-04-04
4.1-83-03	36-04-04
4.1-83-04	36-04-07
4.1-83-05	36-04-05
4.1-83-06	36-04-05
4.1-83-07	36-04-05
4.1-83-08	36-04-05
4.1-83-09	36-04-05.1
4.1-83-10	36-04-04
	36-04-10
4.1-83-11	New section
4.1-83-12	New section
4.1-83-13	36-04-03
4.1-83-14	36-04-03
4.1-83-15	36-04-03
4.1-83-16	36-04-03
4.1-83-17	36-04-09.1
4.1-83-18	36-04-09.2
4.1-83-19	36-04-10
4.1-83-20	36-04-11
4.1-83-21	36-04-12
4.1-83-22	36-04-13
4.1-83-23	36-04-14
4.1-83-24	36-04-15
4.1-83-25	36-04-16
4.1-83-26	36-04-17
4.1-83-27	36-04-18
4.1-83-28	36-04-19
4.1-83-29	36-04-20
4.1-83-30	36-04-21
Wool Dealers	
4.1-88-01	36-04-01
4.1-88-02	36-04-02
	36-04-04
4.1-88-03	36-04-04
4.1-88-04	36-04-07
4.1-88-05	36-04-05
4.1-88-06	36-04-05
4.1-88-07	36-04-05
4.1-88-08	36-04-05.1
4.1-88-09	36-04-04
	36-04-10
4.1-88-10	New section
4.1-88-11	New section
4.1-88-12	36-04-03
4.1-88-13	36-04-03
4.1-88-14	36-04-03
4.1-88-15	36-04-03
4.1-88-16	36-04-09.1
4.1-88-17	36-04-09.2
4.1-88-18	36-04-10
4.1-88-19	36-04-11
4.1-88-20	36-04-12
4.1-88-21	36-04-13
4.1-88-22	36-04-14
4.1-88-23	36-04-15
4.1-88-24	36-04-16
4.1-88-25	36-04-17
4.1-88-26	36-04-18
4.1-88-27	36-04-19
4.1-88-28	36-04-20
4.1-88-29	36-04-21

Recommendations

The committee recommends Senate Bill No. 2026 to rewrite those portions of the North Dakota Century Code that relate to the Seed Department, seed potato certification, and seed potato control areas.

The committee recommends House Bill No. 1026 to rewrite those portions of the North Dakota Century Code that relate to the North Dakota Stockmen's Association, livestock branding, estrays, livestock dealers, and wool dealers. The bill also includes a directive that the Legislative Management continue its study of North Dakota Century Code sections that pertain to agriculture.

MISCELLANEOUS

The committee received a written report from the State Board of Agricultural Research and Education. In accordance with NDCC 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 2013 priorities for both the Agricultural Experiment Station and the Extension Service.

The Advisory Committee on Sustainable Agriculture did not meet during the 2011-12 interim and therefore did not submit a report, as required by NDCC Section 4-01-24.

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 Tony Grindberg (Chairman), Bill Bowman, Randel Christmann, Robert Erbele, Ray Holmberg, Ralph L. Kilzer, Karen K. Krebsbach, David O'Connell, Larry Robinson, Mac Schneider, Ryan M. Taylor, Terry M. Wanzek, Rich Wardner, and John Warner and Representatives Larry Bellew, Michael D. Brandenburg, Al Carlson, Stacey Dahl, Jeff Delzer, Mark A. Dosch, David Drovdal, Eliot Glassheim, Kathy Hawken, Lee Kaldor, Jerry Kelsh, Keith Kempenich, Matthew M. Klein, Gary Kreidt, Joe Kroeber, Bob Martinson, Ralph Metcalf, David Monson, Jon Nelson, Chet Pollert, Bob Skarphol, Blair Thoreson, Don Vigesaa, Alon Wieland, and Clark Williams. Senator Bob Stenehjem, prior to his death in July 2011, and Senator Tom Fischer, prior to his death in November 2011, were members of the Budget Section.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

The following duties assigned to the Budget Section by law were acted on during the 2011-12 interim:

1. **Status of the State Board of Agricultural Research and Education (North Dakota Century Code Section 4-05.1-19(10))** - This section requires, within the duties of the State Board of Agricultural Research and Education, a status report 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 State Board of Higher Education. 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 board.
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. **Annual audits from center of excellence-awarded funds under Chapter 15-69 (Section 15-69-05, effective through July 31, 2023)** - This section requires a center of excellence 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 Centers of Excellence Commission's postaward monitoring of the center.
5. **Game and Fish Department land acquisitions (Section 20.1-02-05.1)** - This section provides Budget Section approval is required for Game and Fish Department land acquisitions of more than 10 acres or $10,000.
6. **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.
7. **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.
8. **Relinquishment of agency rights to recover property (Section 47-30.1-24.1)** - This section provides 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.

9. **Change or expand state building construction projects (Section 48-01.2-25)** - This section provides 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.
10. **Job insurance trust fund (Section 52-02-17)** - This section requires 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.
11. **Report on the number of employees receiving bonuses above the 25 percent limitation (Section 54-06-30)** - This section authorizes agencies to 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 (HRMS) 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).
12. **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.
13. **Acceptance and expenditure of federal funds of more than $50,000 which were not appropriated (Section 54-16-04.1).**
    a. Acceptance of federal funds - This section requires Budget Section approval 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 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 requires Budget Section approval 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 intent to reject the money.
14. **Acceptance and expenditure of other funds of more than $50,000 which were not appropriated (Section 54-16-04.2).**
    a. Acceptance of other funds - This section requires Budget Section approval 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 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 requires Budget Section approval 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 intent to reject the money or programs.
15. **Consider authorization of additional full-time equivalent (FTE) positions (Section 54-16-04.3)** - This section provides on the advice of the Office of Management and Budget (OMB) 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).
16. **Transfers of spending authority from the state contingencies appropriation exceeding $50,000 (Section 54-16-09)** - This section provides, 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 2011-13 biennium.
17. **Capital improvements preliminary planning revolving fund (Section 54-27-22)** - This section provides 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 2011-13 biennium).

18. **Tobacco settlement funds (Section 54-44-04(23))** - This section requires the Director of OMB to report to the Budget Section on the status of tobacco settlement funds and related information.
19. **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.
20. **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.
21. **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 OMB to periodically report to the Budget Section on the success of the risk management workers' compensation program.
22. **Report regarding any transfers between line items and between subdivisions in excess of $50,000 (Section 3 of 2011 Senate Bill No. 2012)** - This section requires the Department of Human Services to report to the Budget Section after June 30, 2012, on any transfers in excess of $50,000 made during the 2011-13 biennium between line items within each subdivision and between subdivisions (effective July 1, 2011).
23. **Quarterly reports regarding the implementation of the comprehensive tobacco prevention and control plan and outcomes achieved (Section 2 of 2011 House Bill No. 1025)** - 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 2011-12 interim (effective July 1, 2011).
24. **Report regarding emergency snow removal grants distributed to counties, townships, and cities before June 30, 2011 (Section 2 of 2011 Senate Bill No. 2369)** - This section requires the Department of Emergency Services to distribute emergency snow removal grants prior to June 30, 2011, and report to the Budget Section regarding the grants awarded (effective May 1, 2011).
25. **Periodic reports regarding 2009 flood disaster-related expenditures, transfers, reimbursements, and general fund deposits (2009 S.L., ch. 64, § 5)** - 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.
26. **Transfers exceeding $50,000 (Section 54-16-04(2))** - This section provides, 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.
27. **Acceptance of federal funds for a specific purpose or program which were not appropriated (Section 54-16-04.1(4))** - This section provides, 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.
28. **State Board of Higher Education's monthly project variance reports (Section 15-10-47)** - This section requires OMB to provide to the Budget Section upon request information relating to the State Board of Higher Education's monthly project variance reports regarding construction projects valued at more than $250,000.
29. **Legacy and Budget Stabilization Fund Advisory Board semiannual reports (Section 21-10-11)** - This section requires the Legacy and Budget Stabilization Fund Advisory Board to provide at least semiannual reports to the Budget Section regarding asset allocation and investment policies developed for the legacy and budget stabilization fund as well as recommendations presented to the state investment board regarding investment of funds in the legacy and budget stabilization funds.
30. **Approve expenditures from the state disaster relief fund (Section 37-17.1-27)** - This section requires Emergency Commission and Budget Section approval of expenditures from the state disaster relief fund to provide the required state share of funding for expenses associated with presidential-declared disasters in the state.

31. **Warrants and checks outstanding for more than 90 days and less than three years (Section 54-11-01)** - This section requires the State Treasurer to report to the Budget Section, within 90 days of the beginning of each fiscal year, all warrants and checks outstanding for more than 90 days and less than three years.
32. **Reports from state agencies that applied for federal grants estimated to be $25,000 or more (Section 54-27-27)** - This section requires OMB to present at each meeting of the Budget Section reports received from state agencies, other than entities under the control of the State Board of Higher Education, that have applied for federal grants estimated to be $25,000 or more (effective July 1, 2011).
33. **Higher education electronic portfolio system pilot program (Section 54-60-27, expires July 1, 2013)** - This section requires the Division of Workforce Development to report to the Budget Section on the use of funding provided for the higher education electronic portfolio system pilot program.
34. **Annual audits from a center of research excellence (Section 54-65-03)** - This section requires a center of research excellence receiving funds under Chapter 54-65 to provide its annual audit on funds distributed to the center**.**
35. **North Dakota University System joint information technology building project (2011 House Bill No. 1003, Section 7)** - This bill requires the University System to report to the Budget Section any funds expended for the University System and University of North Dakota (UND) joint information technology building project.
36. **North Dakota State University (NDSU) Minard Hall project (House Bill No. 1003, Section 8)** - This bill requires NDSU to report to the Budget Section on the status of the Minard Hall project and that the Budget Section may authorize NDSU to increase spending authorization for the project.
37. **State Department of Health status report on United States Environmental Protection Agency (EPA) litigation and other administrative proceedings (2011 House Bill No. 1004, Section 5)** - This bill provides the Budget Section receive quarterly reports from the State Department of Health during the 2011-12 interim regarding the status of any litigation and other administrative proceedings involving the EPA.
38. **Department of Corrections and Rehabilitation quarterly reports on prison expansion project (2011 House Bill No. 1015, Section 5)** - This bill provides the Budget Section receive quarterly reports from the Department of Corrections and Rehabilitation during the 2011-12 interim regarding the progress of the prison expansion project and any amounts and purposes of loans from the Bank of North Dakota to defray expenses of the project.
39. **Office of Management and Budget reports on the status of implementation of the compensation system changes (2011 House Bill No. 1031, Section 4)** - This bill provides the Budget Section receive periodic reports from OMB during the 2011-12 interim on the status of the implementation of the compensation system changes in accordance with identified compensation system initiatives.
40. **Insurance Commissioner report regarding the status of provisions of the Patient Protection and Affordable Care Act (PPACA) (2011 Senate Bill No. 2010, Section 9)** - This bill requires the Insurance Commissioner to report at each meeting of the Budget Section during the 2011-12 interim regarding the status of provisions of PPACA.
41. **Upper Great Plains Transportation Institute annual report on transportation infrastructure needs (2011 Senate Bill No. 2325, Section 1)** - This bill provides the Budget Section receive at least annual presentations from the Upper Great Plains Transportation Institute during the 2011-12 interim regarding the status of report updates and maintenance relating to transportation infrastructure needs for all county and township roads in the state.
42. **State Water Commission expenditure in excess of $447,913,774 in the water and atmospheric resource line item (2011 Senate Bill No. 2020, Section 4)** - This bill requires Budget Section approval for State Water Commission expenditure of funds in excess of $447,913,774 in the water and atmospheric resource line item of the commission's 2011-13 appropriation.
43. **Approve Adjutant General expenditures for presidential-declared state disasters and certain flood mitigation efforts (Senate Bill No. 2369, Section 4)** - This bill requires Emergency Commission and Budget Section approval for the use of funds appropriated to the Adjutant General for defraying expenses associated with presidential-declared state disasters and certain flood mitigation efforts.
44. **State Water Commission $50 million appropriation from resources trust fund (2011 special session Senate Bill No. 2371, Section 19)** - This bill requires Budget Section approval for State Water Commission expenditures of an additional $50 million appropriated from the resources trust fund for purposes of defraying expenses of the agency.
45. **Industrial Commission report to Budget Section on use of $1 million appropriation from the general fund for potential litigation involving the EPA's effort to regulate hydraulic fracturing (special session Senate Bill No. 2371, Section 28)** - This bill provides that the Industrial Commission report quarterly to

the Budget Section during the 2011-12 interim regarding the status of any litigation and other administrative proceedings.

46. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2012 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 2012 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 OMB 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 (December 2012).
2. **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 2012).

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 2011-12 interim:

1. **Designation of a center of excellence (Section 15-69-02, effective through July 31, 2011)** - This section provides 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.
2. **Investment in real property by the Board of University and School Lands (Section 15-03-04)** - This section provides 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.
3. **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.
4. **Reduction of the game and fish fund balance below $15 million (Section 20.1-02-16.1)** - This section provides 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.
5. **Provision of contract services by the Developmental Center at Westwood Park, Grafton (Section 25-04-02.2)** - This section provides, subject to Budget Section approval, the Developmental Center at Westwood Park, Grafton, may provide services under contract with a governmental or nongovernmental person.
6. **Waiver of exemption of special assessments levied for flood control purposes on state property (Section 40-23-22.1)** - This section provides 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.
7. **Termination of food stamp program (Section 50-06-05.1(17))** - This section provides, 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.
8. **Termination of energy assistance program (Section 50-06-05.1(19))** - This section provides, 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.
9. **Transfers resulting in program elimination (Section 54-16-04(1))** - This section provides, 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.

10. **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.
11. **Cashflow financing (Section 54-27-23)** - This section provides that in order to meet the cashflow needs of the state, OMB 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.
12. **Budget stabilization fund (Section 54-27.2-03)** - This section provides any transfers from the budget stabilization fund must be reported to the Budget Section.
13. **Purchases of "put" options (Section 54-44-16)** - This section requires OMB to report any purchases of "put" options to the Budget Section.
14. **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.
15. **Budget reduction due to initiative or referendum action (Section 54-44.1-13.1)** - This section provides, 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.
16. **Children's Services Coordinating Committee grants (Section 54-56-03)** - This section provides 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.
17. **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.
18. **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 which was available in taxable years 2007 and 2008.
19. **Consider request to reduce the commercial property income tax credit (Section 57-38-01.30)** - This section provides Budget Section approval is required for any adjustments made by the Tax Commissioner to the commercial property income tax credit which was available in taxable years 2007 and 2008.
20. **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.
21. **Federal block grant hearings (2011 House Concurrent Resolution No. 3002)** - This resolution authorizes the Budget Section, through September 30, 2013, to hold any required legislative hearings for federal block grants.
22. **Western Area Water Supply Authority state reimbursement (Section 61-40-09)** - This section provides if the Western Area Water Supply Authority is in default and unable to repay its loans and interest to the state in the time period required by the Budget Section, the Budget Section may give written notice to the authority that the state has taken possession and ownership of the water system and the liabilities of the authority.
23. **State Water Commission plan to return governance to the Western Area Water Supply Authority (Section 61-40-09)** - This section provides if the state takes possession and ownership of the water system and the liabilities of the Western Area Water Supply Authority, the State Water Commission is the governing board from the date of notice delivered by the Budget Section. If the commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the commission may request Budget Section approval of a plan to return governance, possession, and ownership to the authority.

OFFICE OF MANAGEMENT AND BUDGET
2009-11 Biennium General Fund Revenues and Expenditures

The Budget Section received a report from OMB on the final status of the general fund for the 2009-11 biennium:

Unobligated general fund balance - July 1, 2009		$361,893,515
Add		
General fund collections through June 30, 2011	$3,242,759,200	
Transfer balance from permanent oil tax trust fund	689,935,590	
Total general fund revenue for the 2009-11 biennium		3,932,694,790
Balance obligated for authorized carryover from the 2007-09 biennium		72,744,745
General fund turnback for the 2009-11 biennium		46,753,449
Total available		$4,414,086,499
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)	
Authorized carryover from the 2007-09 biennium	(72,744,745)	
Emergency and supplemental appropriations	(28,514,807)[1]	
Total appropriations and deficiency requests		($3,355,625,033)
Transfers and adjustments		
Adjustments	($214,193)	
Transfer to the budget stabilization fund	(61,414,562)[2]	
Total transfers and adjustments		($61,628,755)
Ending general fund balance - June 30, 2011		$996,832,711

[1]Supplemental (deficiency) appropriations total $37.2 million as shown below, of which $28.5 million was utilized in the 2009-11 biennium and $8.7 million was continued to the 2011-13 biennium:

State Treasurer	($35,000,000)
Tax Department	(1,810,000)
Industrial Commission	(150,000)
Department of Public Instruction	(211,264)
Valley City State University	(58,904)
Total	($37,230,168)

[2]This transfer is based on the maximum balance allowed in the budget stabilization fund as a percentage of 2011-13 legislative general fund appropriations.

2009-11 Biennium General Fund Emergency and Supplemental Appropriations and General Fund Turnback

The Budget Section received a report from OMB on the 2009-11 biennium agency emergency and supplemental appropriations amounts. Emergency and supplemental appropriations totaled $37.2 million, of which $28.5 million was spent by June 30, 2011. The Office of Management and Budget reported $8.7 million of the 2009-11 biennium emergency and supplemental appropriations was continued into the 2011-13 biennium.

The Budget Section received a report from OMB on the 2009-11 biennium agency unspent general fund appropriation amounts (turnback). Unspent 2009-11 biennium general fund appropriation authority totaled approximately $46.75 million. The Department of Human Services had the largest unspent amount of $26.4 million, resulting from enhanced Medicaid payments from the federal government, cost-savings related to a delayed date of occupancy of new nursing facilities, and less-than-expected utilization of Medicaid transition grants. District courts had turnback of $4.1 million primarily related to an information technology project. The Department of Commerce had turnback of $1.15 million primarily related to the Great Plains Applied Energy Research Center funding which was not spent, as provided for in Section 18 of 2011 Senate Bill No. 2057.

Status of the General Fund

At each Budget Section meeting, a representative of OMB reviewed the status of the state general fund and revenue collections for the 2011-13 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections through August 2012, and reflecting the September 2012 revised revenue forecast for the remainder of the 2011-13 biennium:

Unobligated general fund balance - July 1, 2011		$996,832,711
Add		
General fund collections based on September 2012 preliminary forecast	$4,860,559,531	
Total estimated general fund revenue for the 2011-13 biennium		$5,857,392,242
Balance obligated for authorized carryover from the 2009-11 biennium		106,945,443
Estimated total available		$5,964,337,685
Less		
2011-13 biennium general fund ongoing appropriations	($3,532,895,032)	
2011-13 biennium general fund one-time appropriations	(533,958,760)	
2011-13 biennium special legislative session appropriations	(169,832,668)	
Balance obligated for authorized carryover from the 2009-11 biennium	(106,945,443)	
2011-13 biennium emergency appropriations utilized in the 2009-11 biennium	519,254	
Estimated deficiency requests		
Department of Human Services - Accelerated 2013-15 biennium federal medical assistance percentage (FMAP) costs	(21,200,000)	
State Department of Health	(582,894)	
Job Service North Dakota	(5,847)	
Highway Patrol	(500,000)	
Forest Service	(250,000)	

Tax Department	(981,855)	
State Fair	(1,397,630)	
Total appropriations and estimated deficiency requests		($4,368,030,875)
Estimated general fund balance - June 30, 2013		$1,596,306,810[1]

[1]Pursuant to Section 54-27.2-02, any end-of-biennium balance in excess of $65 million must be transferred to the budget stabilization fund, up to 9.5 percent of general fund appropriations. This amount does not reflect any potential transfers.

September 2012 Revenue Forecast

The Office of Management and Budget's September 2012 revised revenue forecast for the 2011-13 biennium anticipates general fund revenue will total $4.2 billion, $1.4 billion more than the 2011 legislative forecast. The Office of Management and Budget's September 2012 preliminary 2013-15 biennium revenue forecast anticipates total general fund revenue of $4.9 billion for the 2013-15 biennium, $700 million more than the 2011-13 biennium revised forecast.

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 for the 2011-13 biennium to date through September 2012, approximately $62.4 million had been received by the state, and total payments received to date were $367.8 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 2011	$19.7	$11.2	$30.9
April 2012	20.1	11.4	31.5
Total	$39.8	$22.6	$62.4

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)	$3,986,332
Common schools trust fund (45 percent)	17,938,492
Water development trust fund (45 percent)	17,938,492
Total transfers from the tobacco settlement trust fund	$39,863,316
Tobacco prevention and control trust fund	22,578,759
Total tobacco settlement proceeds received during the 2011-12 interim	$62,442,075

The Office of Management and Budget reported revenues and expenditures in the trust funds from December 1, 1999, through May 31, 2012, and balances of the trust funds were as follows:

Community health trust fund	
Revenue	$32,322,863
Expenditures	31,505,713
May 31, 2012, balance	$817,150
Water development trust fund	
Revenue	$143,482,883
Expenditures	117,586,038
May 31, 2012, balance	$25,896,845
Tobacco prevention and control trust fund	
Revenue (including interest)	$49,136,274
Expenditures	12,441,947
May 31, 2012, balance	$36,694,327

Fiscal Irregularities

Pursuant to Section 54-14-03.1, the Budget Section received reports from OMB 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
Department of Commerce	$500	Pay adjustment related to increased workload of one employee to build the disaster website
Department of Commerce	$5,815	Severance pay for one employee due to program restructuring
Job Service North Dakota	$34,820	Severance pay for voluntary reduction in force of four employees due to decreased federal funding
Vision Services - School for the Blind	$6,701	Pay adjustment for summer contracts outside of five teachers' nine-month teaching contracts
Department of Corrections and Rehabilitation	$20,000	Severance pay for an FTE position reassigned from Bismarck to the Williston Parole and Probation District
School for the Blind	$5,214	Payment for three summer contracts outside of the academic year contract
School for the Deaf	$946	Payment for one summer contract outside of the academic year contract

Employee Bonuses

The Office of Management and Budget reported to the Budget Section in September 2011 and September 2012 regarding the number of employees receiving bonuses above the 25 percent limitation pursuant to Section 54-06-30. The Budget Section learned agencies may not give bonuses to more than 25 percent of their employees except in special circumstances approved by HRMS. The Budget Section learned HRMS is required to report exceptions to the Budget Section. In September 2011 OMB reported the Secretary of State provided six employees bonuses above the 25 percent limitation and provided six employees additional performance bonuses for a total of 12 bonuses. The Office of Management and Budget reported the State Treasurer provided one employee a bonus above the 25 percent limitation and provided one employee an additional performance bonus for a total of two bonuses. In September 2012 OMB also reported no agencies made requests or exceeded the 25 percent limitation as of July 1, 2012.

Implementation of State Employee Compensation System Initiatives

The Office of Management and Budget provided status updates to the Budget Section regarding the implementation of the compensation initiatives pursuant to House Bill No. 1031. The Budget Section received the final report from Hay Group in September 2011, including the status per initiative of Section 2 of House Bill No. 1031 as follows:

	Initiative	Status
1.	Adjust methods to determine classified state employee classifications	A preliminary classification and reclassification process was designed by Hay Group in January 2011. Additional changes were made to the preliminary classification and reclassification process and related forms based on agency feedback collected in January 2011. Human Resource Management Services and Hay Group finalized the classification and reclassification process and forms in August 2011. Utilization of the new process and forms to agencies is ongoing by HRMS.
2.	Minimize salary inequities within agencies and within state government	A new grade structure was developed and classifications were allocated to the structure based on the review of job evaluations for 900-plus classifications and evaluation of benchmark classification job evaluations. The Office of Management and Budget purchased Hay Job Evaluation Manager (JEM) technology to enhance the speed and efficiency of the job evaluation process. Human Resource Management Services has adopted the Hay Guide Chart Job Profile method of job evaluation. Job evaluation is now completed by a committee of HRMS and agency human resources staff to appropriately value job classes. There is ongoing work by HRMS to address classification issues identified during the job evaluation process. The new grade structure will be implemented July 1, 2012.
3.	Develop appropriate market comparisons	A custom salary survey completed by Hay Group includes comparisons to North Dakota employers, Hay Group database of North Dakota employers, Central States' salary survey of regional states, Job Service North Dakota data, and the North Dakota Hospital Association survey for a total of 162 benchmark positions. New salary structure options and cost implications were developed and presented for consideration to the State Employee Compensation System Oversight Committee in April 2011. The Legislative Assembly chose to not appropriate funds for implementation. The new salary structure will be implemented July 1, 2012.
4.	Develop cost estimates for potential fringe benefits adjustments--life insurance, long-term disability, and health insurance premiums	The Legislative Management's interim Employee Benefits Programs Committee reviews fringe benefits as appropriate. As part of the initial classified compensation system study, Hay Group reviewed benefits and performed analysis to determine total pay competitiveness.
5.	Expand recruitment and retention tools	Hay Group determined given the degree of volatility in the employment in North Dakota, current statute, policies, and practices permit agencies to address recruitment and retention bonuses sufficiently. To the extent to which pay ranges are set at the market average, the need for recruitment and retention bonuses may be reduced.
6.	Develop a consistent long-term salary increase administration policy	The compensation philosophy statement provides for setting salary ranges at a competitive level in the relevant labor market and pay movement to be primarily based on performance. A pay/performance matrix will be the basis for pay changes suggested by HRMS. To ensure employees may move through pay ranges based on their performance, funding should be at a level greater than the amount by which salary ranges change.
7.	Analyze the effect of appropriating funds for accrued annual and sick leave and defining "vacant" positions to reduce long-term vacant positions included in the budget process	Hay Group suggests as part of the budgeting process, agencies review employee demographic data to project costs for accrued employee annual and sick leave. Hay Group defined a genuine vacancy as the period between one employee leaving a position and another employee filling that position and suggested agencies should have the flexibility to utilize related salary dollars. In the case of longer-term vacancies, Hay Group suggested the vacancies be monitored on a case-by-case basis within the budgeting process.

The Budget Section learned implementation of the compensation initiatives in House Bill No. 1031 established new grade and salary range structures as recommended by the 2009-10 interim Government Services Committee as a result of its study of the classified employee compensation system. The Office of Management and Budget reported new pay grades replaced numeric grades 1 through 20 with alpha grades A through V. The Office of Management and Budget reported salary ranges are based on a broader market sample with a significant focus on North Dakota jobs in a variety of private and public employers of all industry types.

The Budget Section learned the Legislative Assembly in 2011 directed OMB in Section 9 of Senate Bill No. 2015 to set the external competitiveness target for classified state employee compensation based on funding provided for the 2011-13 biennium for state employee compensation. The Office of Management and Budget reported it implemented the new grade structure and new market-related salary ranges on July 1, 2012. The Office of Management and Budget established the salary range market policy point at 100 percent of market. Previously, the market policy point was 95 percent of market. The new salary ranges include minimums at 75 percent of the market policy point and maximums at 125 percent of the market policy point. The Office of Management and Budget reported employee movement through ranges is to be accomplished through 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 as provided in the compensation philosophy statement implemented in House Bill No. 1031. The Office of Management and Budget

reported by delaying implementation until July 2012, HRMS had adequate time to educate agencies on the related changes, and most agencies reported having funding available for the second year of the biennium to increase the salaries of employees that were below the new market minimums for their respective range.

Capital Improvements Preliminary Planning Revolving Fund

The Budget Section received a request from OMB 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 OMB. 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 requested $108,000 from the capital improvements preliminary planning revolving fund for Bismarck State College projects relating to its library and Center for Creativity and Communications. Pursuant to Section 54-27-22, the Budget Section approved the OMB request to use $108,000 from the capital improvements preliminary planning revolving fund for prepayment of consulting and planning fees for proposed capital improvements projects of Bismarck State College.

2013-15 Biennium Budget Form Changes

Pursuant to Section 54-44.1-07, OMB reported proposed changes to the 2011-13 biennium budget forms and data. The Office of Management and Budget proposed and the Budget Section approved the following changes to the budget data for the 2013 legislative session pursuant to Section 54-44.1-07:

- Eliminate telecommute analysis data for new FTE positions.
- Eliminate printed detailed budget data - The information will be accessible online and printed copies made available upon request.

The Office of Management and Budget reported fewer than 10 state employees telecommute and telecommuting is not feasible for most positions, the analysis has been completed for at least three bienniums, and data has had only limited use. The Office of Management and Budget reported detailed budget data is included in an Internet-based report accessible on its website, and eliminating the printed detailed budget data would save an estimated $5,000 in printing and binder costs.

Status of the Risk Management Workers' Compensation Program

The Budget Section received a report from OMB 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 OMB 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, 2012, are as follows:

Nonconsolidated guaranteed cost program premium and assessments		$54,193,451
Risk Management Division deductible premium paid to Workforce Safety and Insurance	$19,972,465	
Risk Management Division paid losses through June 30, 2011	17,414,312	
Risk Management Division pending losses (reserves)	2,364,414	
Risk Management Division combined deductible premium and losses		$39,751,191
Estimated savings for a 10-year period		$14,442,260

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

American Recovery and Reinvestment Act of 2009

The Office of Management and Budget provided information to the Budget Section regarding the American Recovery and Reinvestment Act (ARRA), including an update on the number of jobs resulting from federal stimulus funding. The Budget Section learned $520 million was awarded to the state of North Dakota through June 2011 to be distributed through state agencies, primarily the Department of Public Instruction, the Department of Human Services, and the Department of Transportation. The Office of Management and Budget reported in the quarter ended June 30, 2011, 724.99 North Dakota jobs were paid with ARRA funding as follows:

ARRA-Related Jobs April 1, 2011, to June 30, 2011	
Sector	**Job Count**
Public school districts	425.14
Nonprofit organizations	127.24
Private sector	126.17
State agencies	38.24
Local governments	8.2

Federal Grant Applications

The Office of Management and Budget reported quarterly to the Budget Section regarding state agencies applying for federal grants estimated to be $25,000 or more pursuant to Section 54-27-27. Section 54-27-27

requires OMB to present at each meeting of the Budget Section reports received from state agencies, other than entities under the control of the State Board of Higher Education, that have applied for federal grants estimated to be $25,000 or more. This reporting requirement became effective July 1, 2011. The Office of Management and Budget reported the following agencies applied for federal grants estimated to be $25,000 or more:

Agency	Time Period of Grant	Amount	Title of Grant
September 2012			
Department of Public Instruction	2012/2013 through 2016/2017	$12,000,000	Teacher Incentive Fund 2012 Competition
Housing Finance Authority	7/1/2012 through 6/30/2013	$2,000,000	Section B11 Supportive Housing for Persons With Disabilities Project Rental Assistance Demonstration Program
Department of Agriculture	1 year to 2 years	$51,241	Special Nutrition Programs Farm to School Grant Program
June 2012			
Department of Public Instruction	September 2012 through September 2014	$244,742	2012 team nutrition training grant
Department of Commerce	To be determined	$1,000,000	Revolving loan fund - Energy efficiency local government and public school buildings
Job Service North Dakota	July 2012 through June 2014	$10,154,392	United States Department of Labor - Demonstration grant
Department of Agriculture	N/A	$51,241	Special Nutrition Programs Farm to School Grant Program
March 2012			
Department of Veterans' Affairs	August 2012 through July 2013	$156,000	AmeriCorps
Department of Public Instruction	July 2012 through June 2015	$3,965,274	Statewide longitudinal data system
Department of Labor	February 2012 through September 2012	$165,400	Fair Housing Outreach and Education Partnership
Department of Transportation	January 2012 through December 2012	$10,000,000	Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER III)
December 2011			
Attorney General's office	August 2011 through July 2013	$500,000	Child Sexual Predator Program - United States Department of Justice
September 2011			
Information Technology Department	January 2012 through December 2016	$1,800,000	Investing in Innovation Fund (i3) - Department of Education
Council on the Arts	March 2012 through February 2015	$200,000	Community challenge grant - Department of Housing and Urban Development (HUD)
Department of Transportation	September 2011 through August 2011	$50,000	Safety Data Improvement Program (SaDIP) - Federal Motor Carrier Safety Administration (FMCSA)
Department of Transportation	August 2011 through September 2013	$14,652,842	TIGGER III

State Board of Higher Education Variance Reports

The Office of Management and Budget reported to the Budget Section quarterly regarding monthly project variance reports from the State Board of Higher Education pursuant to Section 15-10-47. Section 15-10-47 requires whenever any new construction, renovation, or repair, valued at more than $250,000 is underway on the campus of an institution of higher education under the control of the State Board of Higher Education, the State Board of Higher Education must provide OMB with monthly project variance reports. Monthly project variance reports must include:

- Name or description of the project.
- Expenditures authorized by the Legislative Assembly.
- Amount of the original contract.
- Amount of any change orders and description.
- Amount of any potential or anticipated change orders.
- Sum of the original contract, change orders, and potential or anticipated change orders and the amount by which that sum varies from the expenditures authorized by the Legislative Assembly.
- Total expenditures to date.
- Scheduled date of completion as noted in the original contract and the latest available scheduled date of completion.
- List of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project.

The Budget Section learned the State Architect reviews change orders and project progress monthly as reports are received.

In September 2012 OMB reported project variance reports for University System projects through June 30, 2012, as follows:

	Number of Projects	Adjusted Authorization	Current Contract Amounts	Contract (Over)/Under Authorization
Projects Specifically Authorized by the Legislative Assembly				
Bismarck State College	4	$18,361,138	$6,489,915	$11,871,223
Lake Region State College	1	$7,490,965	$2,609,920	$4,881,045
Williston State College	5	$28,033,267	$19,330,160	$8,703,107
University of North Dakota	23	$107,241,724	$27,110,546	$80,131,178
North Dakota State University	9	$116,986,050	$51,324,564	$65,661,486
North Dakota Agricultural Experiment Station	4	$23,114,191	$22,546,902	$567,289
North Dakota State College of Science	4	$21,000,000	$17,700,265	$3,299,735
Dickinson State University	1	$16,000,000	$14,579,440	$1,420,560
Mayville State University	3	$9,908,325	$8,152,902	$1,755,423
Minot State University	8	$28,670,000	$21,403,112	$7,266,888
Valley City State University	5	$14,995,000	$13,332,753	$1,662,247
Dakota College at Bottineau	3	$2,200,000	$796,932	$1,403,068
Projects Approved by the State Board of Higher Education				
University of North Dakota	6	$7,066,000	$1,411,374	$5,654,626
North Dakota State University	14	$22,418,000	$16,364,677	$6,053,323
North Dakota State College of Science	4	$3,075,000	$1,907,337	$1,167,663
Dickinson State University	1	$1,100,000	$722,155	$377,845
Minot State University	4	$6,310,000	$1,549,900	$4,760,100
Valley City State University	1	$425,000	$416,400	$8,600

HIGHER EDUCATION

Capital Projects

During the 2011-12 interim, the Budget Section and acted on the following University System capital project requests:

Bismarck State College

- **Student Union** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the project authorization by $1.5 million, from $7.5 million to $9 million, consisting of $1.4 million from auxiliary reserves and $100,000 from bond proceeds (June 2012).

Lake Region State College

- **Wind turbine** - Pursuant to Section 48-01.2-25, the Budget Section **approved** a change in scope and an increase in cost of the wind turbine project to change the location of the turbine and to increase the project authorization by $1,049,216 from $6,132,000 to $7,181,216 to be paid from an energy performance contract (June 2012).

Mayville State University

- **Agassiz Hall** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the project authorization by $76,500 from a Department of Commerce ARRA energy award from a total of $3,668,500 to $3,745,000 (September 2011).
- **Agassiz Hall** - Pursuant to Section 15-10-12.1, the Budget Section **approved** utilizing Agassiz Hall local funds of $64,300 rather than revenue bond proceeds for a portion of the costs of the project under Section 15-10-12.3 (September 2011).
- **Science-library complex** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the project authorization by $95,000 from $5,138,328 to $5,233,328 for additional project improvements that are either complete or partially complete and under Section 15-10-12.3 to use institutional collection reserves ($50,000), library local funds ($25,000), and science grant indirect funds ($20,000) for the project improvements (December 2011).
- **Jerome Berg football field and Scott Berry baseball field** - Pursuant to Section 15-10-12.1, the Budget Section **did not approve** project authorization of $1,056,000 from private fundraising proceeds ($652,000) and private grant sponsorship funds ($404,000) for installation of artificial turf at Jerome Berg football field and Scott Berry baseball field (December 2011).
- **Agassiz Hall** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the Agassiz Hall renovation project authorization by $30,000 from $3,745,000 to $3,775,000 for closeout costs and general contractor items to be paid from campus housing reserves (March 2012).

Minot State University

- **Geothermal conversion** - Pursuant to Section 48-01.2-25, the Budget Section **approved** a change in project scope of the geothermal conversion project to include a more limited area and to complete additional areas as funding is available (September 2011).
- **Swain Hall** - Pursuant to Section 15-10-12.1, the Budget Section **approved** the use of interest earnings, indirect cost recoveries, and continuing education net revenue to provide $703,365 of the $703,615 local match requirement for the Swain Hall construction project (September 2011).

North Dakota State University

- **Batcheller Building** - Pursuant to Section 15-10-12.1, the Budget Section **approved** project authorization of $1.75 million from the Center for Biopharmaceutical Research and Production centers of excellence program required cash match for the Batcheller Building first floor construction project in the Research and Technology Park (December 2011).
- **Minard Hall** - The Budget Section **approved** an increase in the project authorization by

$4,874,300 from $18,000,000 to $22,874,300 under Section 48-01.2-25 and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds (December 2011).

- **Gate City Bank Auditorium** - Pursuant to Section 15-10-12.1, the Budget Section **approved** the Gate City Bank Auditorium project in the amount of $450,000 to be paid from a private donation ($410,000) and extraordinary repairs funding ($40,000) (June 2012).

North Dakota State College of Science

- **Football complex** - Pursuant to Section 15-10-12.3, the Budget Section **did not approve** utilization of $910,000 from auxiliary service income and $40,000 from a vendor contribution rather than private funds for a portion of the costs of the football complex renovation project (December 2011).
- **Bisek Hall** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the size of the Bisek Hall project from 54,900 gross square feet to approximately 65,600 gross square feet (March 2012).
- **Football complex** - Pursuant to Section 15-10-12.3, the Budget Section **did not approve** utilization of $910,000 from auxiliary service income and $40,000 from a vendor contribution rather than private funds for a portion of the costs of the football complex renovation project (March 2012).

University of North Dakota

- **Alumni Center** - Pursuant to Section 15-10-12.1, the Budget Section **approved** project authorization of the Alumni Center construction project on the UND campus. Funding of $2 million is from a direct gift of funds to the UND Alumni Foundation (June 2011).
- **Education building** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the education building addition and renovation project authorization by $10,000 of donations, from $11.2 million to $11.21 million, for close-out and warranty support work (December 2011).
- **Joint information technology building** - Pursuant to Section 48-01.2-25, the Budget Section **approved** a change in scope of the joint UND and University System information technology office building project to include renovation of an existing facility and construction of a new facility rather than only construction of a new facility (March 2012).

Williston State College

- **Residence Hall** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the project authorization by $100,000, from $9,875,000 to $9,975,000. The additional funding is from a donation (June 2011).
- **Workforce Training Center** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the project authorization of the Workforce Training Center project by $1,685,000, from $2,225,000 to $3,910,000. Previously authorized funding for the project consists of $500,000 from the general fund and $1,725,000 from a Bank of North Dakota loan to be repaid from workforce training revenues. Additional funds being requested include $10,000 from donations and a minimum of $1,675,000 from private or workforce training revenues (June 2011).
- **Campus branding** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in the project authorization for Phases I and II of the campus branding project by $1.5 million, from $1.5 million to $3 million. Previously authorized funding for the project consists of $1 million from the general fund and $500,000 from private funds. Additional funds being requested include an additional $1.5 million of private foundation funds (June 2011).
- **Campus branding** - Pursuant to Section 48-01.2-25, the Budget Section **approved** a reduction in the scope of the campus branding project authorization from Phases I and II at a cost of $3 million to Phase I at a cost of $1.8 million (December 2011).
- **Workforce Training Center** - The Budget Section **approved** a change in project scope under Section 48-01.2-25 for Phase II of the project to add classroom and associated office space to the Petroleum Safety and Technology Center rather than two high bays and an increase in the project authorization under Section 15-10-12.1 by $2,828,267 from $3,910,000 to $6,738,267 to be paid from private gift and grant funds and a change in scope under Section 48-01.2-25 for Phase III to include a new building with 36,400 square feet rather than 15,600 square feet for classrooms, offices, a conference room, and a reception area for the TrainND Division (June 2012).

University of North Dakota - Joint Information Technology Project

The University of North Dakota provided periodic reports to the Budget Section regarding funding expended for the University System and UND joint information technology building project pursuant to Section 7 of House Bill No. 1003. The University of North Dakota reported in September 2012 that the total estimated project cost is $16.8 million, a decrease from the original appropriation of $25.5 million which consisted of $12.5 million from the general fund, up to $5 million from one-time efficiency savings, and a federal grant of $8 million. The Budget Section learned the federal grant of $8 million was not available for the project, and in March 2012 the Budget Section received and approved a request for a change in project scope to include renovation of an existing facility for the data center and construction of a new office facility rather than only construction of a new facility. The University of North Dakota reported the revised project plan costs less

than the original plan and provides for a Tier III rather than a Tier II information technology facility which meets the secure data center requirements for administrative, academic, and research standards. The Budget Section learned as of September 2012, the project is in progress and is anticipated to be completed by July 31, 2013.

North Dakota State University - Minard Hall

North Dakota State University provided periodic reports to the Budget Section regarding the status of the Minard Hall project pursuant to Section 8 of House Bill No. 1003. North Dakota State University reported the Minard Hall project is anticipated to be completed by spring 2013, and project costs are within the budget of $22.87 million. In December 2011 the Budget Section approved an increase in project authorization by $4,874,300 from $18,000,000 to $22,874,300, with the additional funding to be from insurance proceeds, legal settlements, and other available funds. The Budget Section learned $4.87 million of project costs relate to the building collapse and $18 million for Phases I, II, and III of the project. North Dakota State University reported project expenditures as of August 31, 2012, totaling $15,895,430.

The Budget Section received information from the Anderson, Bottrell, Sanden & Thompson Law Firm, Fargo, regarding legal action NDSU has pursued to recover damages, expenses, and costs resulting from the collapse of Minard Hall. The Budget Section learned two civil lawsuits have commenced--both venued in the district court in Fargo. In the first litigation, NDSU brought suit against the state fire and tornado fund requesting a judgment that the fund's insurance policy cover damages sustained as a result of the collapse. In the second litigation, the state, through NDSU and the State Board of Higher Education, filed suit against JLG (architectural firm), Heyer Engineering (structural engineering firm), and NTI (geotechnical engineering firm) to recover damages sustained as a result of the collapse of Minard Hall and as a result of the redesign of the north addition to Minard Hall. The Anderson, Bottrell, Sanden & Thompson Law Firm reported in September 2012 both lawsuits are in written discovery phase estimated to be completed within two months. Depositions will begin thereafter. The Budget Section learned the Anderson, Bottrell, Sanden & Thompson Law Firm does not expect any trial to occur for at least one year.

LEGACY AND BUDGET STABILIZATION FUND ADVISORY BOARD

The Budget Section received reports from the Legacy and Budget Stabilization Fund Advisory Board regarding the development of investment policies for the legacy fund and budget stabilization fund pursuant to Section 21-10-11 created by the Legislative Assembly in 2011. Section 21-10-11 requires the advisory board to provide at least semiannual reports to the Budget Section regarding asset allocation and investment policies developed for the legacy fund and budget stabilization fund as well as recommendations presented to the State Investment Board regarding investment of funds in the legacy fund and budget stabilization fund. In September 2012 the advisory board reported it continues to evaluate the budget stabilization fund investment policy statement, and the board had approved an investment policy statement for the legacy fund in December 2011.

The advisory board reported that the investment policy statement of the legacy fund was developed to focus on the goal provided for in Senate Bill No. 2302 as approved by the Legislative Assembly--to preserve principal while maximizing total return. The Budget Section learned the investment policy statement asset class mix provides that 100 percent of legacy fund assets be held in bonds or fixed income, and the advisory board anticipates considering plans for including stocks and equities as a part of the asset class mix in the future.

The Budget Section learned in August 2012 the advisory board recommended the State Investment Board arrange to contract with an investment consultant to conduct a study on the appropriate asset class mix for the legacy fund. At the end of August 2012, the legacy fund had a balance in excess of $492 million. The advisory board reported a joint meeting with the State Investment Board was planned in late September 2012 to hear presentations by investment consultant candidates of proposals to conduct a study on the appropriate asset class mix for the legacy fund. The Budget Section learned the Attorney General had issued an opinion letter that states investment consultant costs are associated with the management of the legacy fund and are an appropriate expense to be paid from the fund.

ADJUTANT GENERAL

2011 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 2 of Senate Bill No. 2369. Section 2 of Senate Bill No. 2369 provided a county, township, or city may apply to the Department of Emergency Services for an emergency snow removal grant for reimbursement of up to 60 percent of the costs incurred by the county, township, or city for the period January 2011 through March 2011 that exceed 200 percent of the average costs incurred for these months in 2004 through 2008.

The Adjutant General reported $9 million in emergency snow removal grants were distributed from the state disaster relief fund pursuant to Section 2 of Senate Bill No. 2369 prior to June 30, 2011. The Adjutant General reported 162 emergency snow removal grant applications totaling $9.6 million were received, of which $9 million was distributed to applicants in 46 counties. The Adjutant General provided a report listing award applicants to the Budget Section in September 2011 pursuant to Section 2 of Senate Bill No. 2369.

2009 Flood Disaster-Related Expenditures

The Budget Section received a report from the Adjutant General regarding 2009 flood disaster-related expenditures, transfers, reimbursements, and general

fund deposits through June 2011 pursuant to Section 5 of Senate Bill No. 2444. The Budget Section learned the $12.5 million provided from the general fund in Senate Bill No. 2444 was utilized for public assistance grants ($6.8 million), National Guard disaster response costs ($5 million), and other assistance grants ($700,000). The Adjutant General reported of the $5 million National Guard disaster response costs, Federal Emergency Management Agency (FEMA) reimbursements totaled $3 million, which was deposited in the general fund before June 30, 2011, pursuant to provisions of Senate Bill No. 2444. The Adjutant General reported 2009 flood disaster relief grants that provide 50 percent of the local share totaled $3.97 million. The Budget Section received a report identifying the estimated state share by grant applicant pursuant to 2009 Senate Bill No. 2012.

The Budget Section learned 2009 flood disaster-related costs were in excess of the FEMA threshold of $78.3 million, and therefore the federal match increased from 75 to 90 percent for most flood response and recovery costs. The Adjutant General reported through September 2012 estimated 2009 flood costs totaled $184 million and actual expenditures totaled $147.7 million.

2011 Flood Disaster-Related Expenditures

The Budget Section received periodic reports from the Adjutant General regarding 2011 flood disaster-related expenditures. The Budget Section learned 2011 flood disaster-related costs were eligible for 90 percent federal matching funds for most flood response and recovery costs. The Budget Section learned 2011 flood disaster obligated costs relating to public response, recovery, and mitigation totaled $611.9 million as of August 2012. The Budget Section learned 2011 flood expenditures may not be finalized until future bienniums. The Adjutant General provided the following report on 2011 flood disaster obligated costs:

	Obligations as of August 2012 (Amounts Shown in Millions)	Expenditures as of August 2012 (Amounts Shown in Millions)	State Share Description
State indirect	$24.0	$24.0	Mission assignments require 7 percent state match and 3 percent local share.
Public assistance	271.6	244.5	10 percent match - State will provide 7 percent (4 percent state share plus 3 percent for one-half of the 6 percent local share pursuant to provisions of SB 2369).
Individual assistance	241.3	213.7	The other needs assistance category of individual assistance requires a 25 percent match. The transitional housing assistance match is estimated at $2 million.
Hazard mitigation	75.0		25 percent match - State will provide 17.5 percent (10 percent state share plus 7.5 percent for one-half of the 15 percent local share pursuant to provisions of SB 2369).
Total	$611.9	$482.2	

State Disaster Relief Fund

The Budget Section received reports on the use of money in the state disaster relief fund for costs associated with state disasters. The Budget Section learned the Legislative Assembly in 2011 authorized the Adjutant General to use funding from the state disaster relief fund for costs associated with state disasters and flood mitigation efforts for the 2011-13 biennium, subject to Emergency Commission and Budget Section approval pursuant to Section 4 of Senate Bill No. 2369, as follows:

	State Disaster Relief Fund[1]
2011 regular session	
Disaster response coordination contract (Section 4 of SB 2016)	$400,000
Spending authority for expenses related to the 2009 flood disaster and other unclosed state disasters (Section 1 of SB 2016)	7,842,304
State share of funding for presidential-declared disasters pursuant to Section 37-17.1-27 (Section 5 of SB 2016)	3,500,000
Emergency snow removal grants (Section 2 of SB 2369)	9,000,000
Disaster relief (Section 4 of SB 2369)	22,000,000
2011 special session	
State share of funding for presidential-declared disasters pursuant to Section 37-17.1-27 (Section 15 of SB 2371)	29,500,000
Contingent appropriation for any disaster in 2012 (Section 16 of SB 2371)	5,000,000
Appropriations (Section 9 of SB 2371) for: • Additional rebuilders loan program funding to the Bank of North Dakota • Funding to political subdivisions for flood-impacted housing rehabilitation	10,000,000
Total	$87,242,304

[1]In Section 4 of Senate Bill No. 2369, the Legislative Assembly provided that expenditure of money in the state disaster relief fund is subject to Emergency Commission and Budget Section approval.

Pursuant to Section 4 of Senate Bill No. 2369, the Budget Section approved requests from the Adjutant General relating to the use of funding in the state disaster relief fund totaling $57.1 million. In September 2012 the Adjutant General provided information to the Budget Section on actual expenditures through July 2012 and projected biennial expenditures for the 2011-13 biennium compared to expenditures approved by the Emergency Commission and Budget Section:

Disaster	Actual Expenditures Through July 2012	Projected Biennial Expenditures	Emergency Commission and Budget Section Approvals	Pursuant to 2011 Senate Bills
State match for disasters prior to 2009	$784,025	$859,851	$1,091,013	Section 1 of SB 2016
2009 flood	1,541,844	6,711,199[1]	4,820,828	Section 1 of SB 2016
January 2010 winter storm	12	507,540	565,527	Section 15 of SB 2371
2010 flood	39,164	2,263,526[1]	1,885,457	Section 15 of SB 2371
April 2010 ice storm		1,185,531[1]	1,142,381	Section 15 of SB 2371
2011 flood	5,820,553	16,425,105	29,205,205	Section 5 of SB 2016 ($3.5 million)
				Section 4 of SB 2369 ($14 million)
				Section 15 of SB 2371 ($11,705,205)
Disaster response coordination	126,000	400,000	400,000	Section 4 of SB 2016
Flood mitigation in incorporated cities	679,560	3,200,000	3,200,000	Section 4 of SB 2369
Road grade raising projects	7,240	4,800,000	4,800,000	Section 4 of SB 2369
Flood-impacted housing rehabilitation	2,268,650	10,000,000	10,000,000	Section 9 of SB 2371
Contingent 2012 disaster exceeding $50 million		5,000,000		Section 16 of SB 2371
Total	$11,267,048	$51,352,752	$57,110,411	

[1]If actual expenditures for a disaster exceed the amount approved for the 2011-13 biennium by the Emergency Commission and Budget Section, the Adjutant General will need approval from the Emergency Commission and Budget Section for additional expenditures under Section 37-17.1-27.

STATE TREASURER

Outstanding Warrants and Checks

The Budget Section received a report from the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than three years pursuant to Section 54-11-01 created by the Legislative Assembly in 2011. Section 54-11-01 provides the State Treasurer report to the Budget Section, within 90 days of the beginning of each fiscal year, all warrants and checks outstanding for more than 90 days and less than three years. The State Treasurer provided reports to the Budget Section in September 2011 and September 2012. The Budget Section learned items reported may be the result of money which has not been received by the proper recipient or checks that have not been cashed. Annually, checks more than three years old are transferred to the Department of Trust Lands as unclaimed property.

The State Treasurer reported in September 2011 a total of $3.1 million in outstanding checks existed for fiscal years 2009, 2010, and 2011. The State Treasurer provided a listing of 2,275 outstanding checks which were sent to the Unclaimed Property Division of the Department of Trust Lands in October 2011 totaling $434,749.

The State Treasurer reported in September 2012 a total of $3.9 million in outstanding checks existed for fiscal years 2010, 2011, and 2012. The State Treasurer provided a listing of 2,681 outstanding checks which were sent to the Unclaimed Property Division of the Department of Trust Lands in October 2012 totaling $260,636.

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 and prioritized as research initiatives. The Budget Section learned a consideration in establishing priorities is the high cost of living in energy-impacted areas of the state and the effect this has on contracting and retaining talent for workers in these areas.

INFORMATION TECHNOLOGY DEPARTMENT

Annual Reports

Pursuant to Section 54-59-19, the Budget Section received the Information Technology Department's 2010-11 and 2011-12 annual reports. In fiscal year 2012, the department reported--based on customer surveys--the department's services met business needs 92.2 percent of the time compared to 91.1 percent in fiscal year 2011, the department is a trusted business partner 92.3 percent of the time compared to 94.4 percent in fiscal year 2011 and is the preferred information technology provider 83.9 percent of the time compared to 86.8 percent in fiscal year 2011. The department responded to 67,598 incidents during fiscal year 2012 and completed 40,949 service requests, of which 99.9 percent were rated as providing overall satisfaction. The department reported billings for fiscal year 2012 of $52.9 million, $2.2 million more than fiscal year 2011. The majority of revenue is generated from computer hosting (29 percent), software development (24 percent), and direct billing (24 percent) service fees. The department reported the majority of its service rates are competitive with surrounding states. The department reported a turnover rate of 6.9 percent in fiscal year 2012, which is higher than its target rate of less than 6 percent.

DEPARTMENT OF HUMAN SERVICES

Transfers in Excess of $50,000

The Budget Section received a report from the Department of Human Services regarding transfers in excess of $50,000 pursuant to Section 3 of 2011 Senate Bill No. 2012. The Budget Section learned through August 2012 the department had the following transfers between line items and between subdivisions of Senate Bill No. 2012 in excess of $50,000:

Transfer	General Fund	Total Funds	Explanation
Staff realignments	$2,046,793	$5,563,040	A total of 38.0 FTE positions and associated costs were transferred from other divisions into the Information Technology Services Division to better match costs to functions performed.
Estate collection realignment	$269,126	$476,417	One FTE position was transferred from the Northeast to the Southeast Human Service Center for a statewide medical director position for the eight human service centers.
Federal reporting position realignment	$37,706	$157,109	One FTE position and associated costs were transferred into Fiscal Administration Division due to increased federal reporting demands and requirements related to the Medicaid program.
Aging Services software purchase		$55,166	Federal funding was transferred from Aging Services to Information Technology Services Division for software to track required statistical information.
Vocational rehabilitation funding transfer	$24,090	$113,098	Funding was transferred between the Northwest and North Central Human Service Centers to align funding with needed resources.

Status of Medicaid Management Information System

The Budget Section received periodic reports from the Department of Human Services and Xerox State Healthcare, formerly Affiliated Computer Services, regarding the status of the Medicaid management information system (MMIS) computer project. The department reported an additional nine-month schedule delay is attributable to the inclusion of *International Classification of Diseases, Tenth Revision* (ICD-10) functionality into the North Dakota Health Enterprise which is federally mandated to be operational by October 2013. The Budget Section learned this functionality was not included in the original scope of the contract and will cost $8,425,282. The department reported the inclusion of the ICD-10 functionality also affects the budget for other third-party vendors ($678,211), the Information Technology Department ($1,729,559), and the Department of Human Services contract staff ($63,747). The department reported the project's executive steering committee has approved the increase to the project scope, and the department has sufficient funding within its current operating budget for the cost increase.

The department reported negotiations with Xerox State Healthcare were finalized in May 2012 resulting in a reduction to the project cost by $1 million because of a seven-month project delay. The Budget Section learned the original estimated completion date for the MMIS project was July 2009, and the planned completion date is now estimated for October 2013.

The department reported the following project funding summaries through August 2012:

Description	Budget	Spent Through August 2012	Remaining
General fund	$7,533,297	$3,466,386	$4,066,911
Federal funds	72,191,913	41,556,709	30,635,204
Other funds	2,193,526	2,193,526	0
Total	$81,918,736	$47,216,621	$34,702,115

Project Component	Budget	Costs Through August 2012
MMIS	$53,728,257	$27,045,111
Provider management		
Member management		
Claims processing and payment		
• Prior authorization		
• Utilization review		
• Third-party liability		
• Recoupment		
• Estate recovery		
• Drug rebate		
Program management		
• Benefit administration and care management		
• Program integrity		
• Financial and program analysis and reporting		
Data warehouse system	5,252,000	3,175,000
Longitudinal financial analysis reporting		
Clinical outcome and disease management analysis		
Ad hoc reporting		
Independent verification and validation services	6,915,521	5,492,634
Overall quality assurance monitoring		
• System requirements and analysis		
• Code development		
• Data conversion		
• System testing		
Verifying the use of appropriate development methodologies and processes		
Validating the completeness and accuracy in all project reporting and deliverables		
Information Technology Department services	11,816,392	9,821,291
Project management services		
Software development		
Systems administration		
Other	4,206,566	1,682,585
Subject matter experts		
Facilities		
Total	$81,918,736	$47,216,621

STATE DEPARTMENT OF HEALTH

Environmental Protection Agency Litigation and Other Administrative Proceedings

The State Department of Health presented information quarterly to the Budget Section on EPA litigation and other administrative proceedings pursuant to Section 5 of House Bill No. 1004. The Legislative Assembly in 2011 provided $1,000,000, $500,000 of which is from the general fund and $500,000 from a line of credit at the Bank of North Dakota, for the purpose of defraying expenses associated with legal action against the EPA. Through September 2012, the State Department of Health reported spending $513,000. Expenditures have been incurred relating to activities associated with the following legal challenges:

- Sulfur dioxide one-hour standard - Relates to the state challenging an EPA proposition that requires states to utilize air quality models to determine compliance to established standards. On July 20, 2012, the Washington D.C., District Court found the EPA proposed modeling not ready for application. The EPA subsequently retracted its position requiring modeling to determine attainment status. The court's finding allows states to challenge any final EPA action in the future to impose obligations on states.
- Best available control technology - Relates to the federal Department of Justice and EPA challenge of the state's determination that selective noncatalytic reduction is the most appropriate control technology for Minnkota Power Cooperative, Inc., to control nitrogen oxide air emissions. In December 2011 the federal district court in Bismarck denied the United States' motions finding that North Dakota's determination that selective noncatalytic reduction is the best available control technology for the Milton R. Young Station.
- Regional haze state implementation plan - Relates to the EPA challenge of the state's proposed implementation plan to comply with requirements of the regional haze rule. On March 2, 2012, the EPA provided a final decision approving the majority of the state's plan, including approval of the state's selective noncatalytic reduction nitrogen oxide control technology to be installed on the Minnkota and Leland Olds power generation facilities. The EPA's final decision did not agree with the state's visibility modeling methodology and would require installation of appropriate combustion controls at the Antelope Valley Station and selective noncatalytic reduction at the Great River Energy Coal Creek Station. The State Department of Health has notified the EPA it is challenging the federal implementation plan. Legal briefs are due to the federal court by October 1, 2012.
- Other state challenges to consent agreements which directly impact North Dakota but were developed between the EPA and environmental groups.

TOBACCO PREVENTION AND CONTROL EXECUTIVE COMMITTEE

The Center for Tobacco Prevention and Control Policy and the Tobacco Prevention and Control Executive Committee presented information to the Budget Section quarterly regarding the implementation of the comprehensive tobacco prevention and control plan pursuant to House Bill No. 1025. The 2011-13 biennium appropriation for the Tobacco Prevention and Control Executive Committee is $12.9 million. The Budget Section learned through August 2012, the Tobacco Prevention and Control Executive Committee spent $6.1 million of its appropriation, including $5.45 million for grants and professional fees as follows:

	Spent Through August 2012	Estimated 2011-13 Biennium Total
Tobacco settlement state aid grants to all local public health units	$585,668	$940,000
Local tobacco control policy grants to all local public health units	3,288,758	6,791,516
Special initiative grants and other grants to implement Centers for Disease Control and Prevention best practices	634,621	1,528,074
Professional services contracts and information technology contractual fees	942,707	1,935,829
Total	$5,451,754	$11,195,419

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 55 renaissance zone cities, of which 9 have established renaissance fund organizations. The Budget Section learned 7 of the 9 renaissance fund organizations have submitted independent auditor's reports to the department with no findings, and the remaining 2 renaissance fund organizations are in the process of submitting reports.

The department reported the following tax credit summary to the Budget Section in September 2012:

Renaissance Tax Credits	Total Credits Authorized	Total Credits Claimed	Total Credits Available	
			Committed	Uncommitted
Category 1 - (0-5,000 population)	$439,766	$439,766[1]		
Category 2 - (5,001-30,000 population)	682,500	250,000[2]		$432,500
Category 3 - (Over 30,000 population)	7,377,734	4,835,000[3]	$1,763,750	778,984
Total	$8,500,000	$5,524,766	$1,763,750[4]	$1,211,484[4]
Source - Tax credits provided by Legislative Assembly				
1999	$2,500,000	$2,500,000		
2003	$2,500,000	$2,067,500		$432,500

Renaissance Tax Credits	Total Credits Authorized	Total Credits Claimed	Total Credits Available	
			Committed	Uncommitted
2009	$2,500,000	$836,250	$1,663,750	
2011	$1,000,000	$121,016	$100,000	$778,984

[1]Category 1 cities - Casselton ($37,500), Hazen ($15,500), Mayville ($99,050), and Hope ($287,716).

[2]Category 2 cities - Jamestown ($150,000) and West Fargo ($100,000).

[3]Category 3 cities - Fargo ($4,835,000).

[4]Of the $2,975,234 credits available, $563,750 is reserved for Fargo and $1.2 million for Grand Forks. If not claimed in a timely manner, the reserved credits can be used by other renaissance fund organization cities.

Centers of Excellence

Section 15-69-06 (2009 Senate Bill No. 2018) creates a centers of excellence fund. Money in the fund is appropriated to the Department of Commerce on a continuing basis for implementing and administering the centers of excellence program. Interest earned on money in the fund is retained in the fund. The Legislative Assembly in 2011 did not appropriate new funding to the centers of excellence fund for the 2011-13 biennium. Estimated expenditures for the 2011-13 biennium relate to centers of excellence funding awarded in prior bienniums. Pursuant to provisions of 2011 Senate Bill No. 2057, the centers of excellence fund will be repealed on August 1, 2023.

The Department of Commerce reported during the 2009-11 biennium, three new centers of excellence were awarded grants totaling $9,717,000 and centers of excellence enhancement grants were awarded totaling $10 million as follows:

Centers of Excellence Awards 02009-11 Biennium	
Centers of excellence awards	
North Dakota State University	
Center for Advanced Technology Development and Commercialization	$3,900,000
Centers for Sensors, Communications and Control	2,800,000
Center for Biopharmaceutical Research and Production 2.0	3,015,000
Subtotal	$9,715,000
Enhancement grants	
University of North Dakota	
Center of Excellence for Unmanned Aircraft Systems Research, Education, and Training	$2,754,000
Grand Forks Air Force Base realignment business transition	200,000
North Dakota Unmanned Aircraft Systems Airspace Initiative	100,000
Unmanned aircraft systems software and curriculum development	600,000
Certificate programs for full motion video and activity-based intelligence analysis	746,000
V2 Aerospace, Inc., technical assistance	370,000
Law enforcement and public safety agency small unmanned aircraft systems course	230,000
North Dakota State University	
Research 1 expansion	4,000,000
Materials and Nanotechnology Center	1,000,000
Subtotal	$10,000,000
Total	$19,715,000

Centers of Research Excellence

In Section 12 of 2011 Senate Bill No. 2057, the Legislative Assembly established a centers of research excellence fund. Money in the fund is appropriated to the Department of Commerce on a continuing basis for implementing and administering the centers of research excellence program. Interest earned on money in the fund is retained in the fund. The Legislative Assembly in 2011 appropriated $12 million from the general fund for transfer to the centers of research excellence fund for providing funding for a limited deployment-cooperative airspace project grant ($4 million--$2.7 million to UND and $1.3 million to NDSU), centers of research excellence grants ($5 million--$1 million to UND and $4 million to NDSU), and base realignment grants for the 2011-13 biennium ($3 million to UND).

In June 2012 the Department of Commerce reported centers of research excellence awards for the 2011-13 biennium were:

Centers of Research Excellence Awards 2011-13 Biennium	
Centers of research excellence awards	
North Dakota State University	
Center for Life Sciences Research and Applications	$1,350,000
Center for Technologically Innovative Processes and Products	320,000
Subtotal	$1,670,000
Limited deployment-cooperative airspace project grants	
University of North Dakota	$2,700,000
North Dakota State University	1,300,000
Subtotal	$4,000,000
Base realignment grants	
University of North Dakota	
Global Hawk sensor operator part task trainer	$878,204
North Dakota Unmanned Aircraft Systems Airspace Initiative (Phase 2)	255,440
Airspace Integration Team - Unmanned Aircraft Systems National Test Site	500,000
University of North Dakota - Center for Innovation Foundation	
Joint Distributed Common Ground System	125,706
Enhanced Use Lease (EUL) - Grand Forks Air Force Base	486,750
Subtotal	$2,246,100
Total	$7,916,100

Centers of Excellence and Centers of Research Excellence Audit and Monitoring Reports

The Budget Section received monitoring and annual audit reports of centers of excellence and centers of research excellence pursuant to Sections 15-69-05(2) and 54-65-03. The Department of Commerce reported because the centers of research excellence program began in the 2011-13 biennium, reports for this program will not be available until fiscal year 2013. The Budget Section learned state statute requires each center of excellence to undergo financial audits after two fiscal years of operation and at the conclusion of expending all award funds, and agreed-upon procedures engagements are required for years that a center of excellence does not have a full fiscal audit conducted. The department provided audits for the fiscal year ended

June 30, 2011. The department reported most findings were administrative in nature and have been addressed and corrected or will be addressed and corrected if the items related to methodologies of the annual functional performance report.

The Budget Section learned state law requires the Centers of Excellence Commission to monitor each centers of excellence award for a period of 6 years to 10 years, monitoring begins after the center has been in existence for at least three fiscal years. 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 department reported as of June 30, 2011, 11 centers had been in existence three fiscal years. The department reported of the 11 centers, 9 were determined to have accomplished desired economic benefits while 2 did not receive this determination--Valley City State University's Enterprise University and UND Research Foundation's Center of Excellence in Life Sciences and Advanced Technologies - Research Enterprise and Commercialization Technology Accelerator facility.

The department reported the centers of excellence program has had an estimated total economic impact on North Dakota's economy of $538.8 million. The department reported centers of excellence expenditures of $33 million as of June 30, 2011, and the centers of excellence program has led to the creation of 973 jobs, engaged 185 business partners with the centers, and assisted to start or significantly expand 21 businesses.

Electronic Portfolio System Pilot Program

The Budget Section received periodic reports from the Department of Commerce on the use of $150,000 of one-time funding provided for the higher education electronic portfolio system pilot program pursuant to Section 54-60-27. The Budget Section learned an eFolio pilot project committee was organized, including representation from the North Dakota State College of Science, Valley City State University, Job Service North Dakota, the University System, and the Department of Commerce. The department reported the project committee selected MyeFolio.com for the pilot program--a product available from Avenet Web Solutions LLC--to enable users to create portfolios highlighting their education and skills and to enable employers and economic developers to conduct online searches to determine workforce potential by geographic region, skill, education, and experience. The Budget Section learned MyeFolio.com requires further customization to enable a statewide search function. The department reported students at Valley City State University, North Dakota State College of Science, NDSU, the University of Mary, and nonstudent job seekers utilized the portfolio system.

Ethanol Plants Receiving Production Incentives

The Budget Section received information from the Department of Commerce on a reporting requirement under Section 17-02-01 related to ethanol plants receiving production incentives. Section 17-02-01 provides 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. The Budget Section learned ethanol plants in operation before July 1, 1995, are no longer eligible to receive the production incentive that required reporting under Section 17-02-01, and the incentive was discontinued in the 2005-07 biennium. The department recommended Section 17-02-01 be repealed.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Prison Expansion Project

The Department of Corrections and Rehabilitation presented information quarterly to the Budget Section on its prison expansion project pursuant to Section 5 of 2011 House Bill No. 1015. Provisions of the bill require the department reports to include any amounts and purposes of loans from the Bank of North Dakota to defray expenses of the project. The department reported in September 2012 the project is on budget and has an expected March 2013 date of completion. The Budget Section learned the completion date was adjusted from December 2012 due to contractors being unable to attract and retain qualified personnel. The department reported as of September 2012 it had not borrowed any funds from the Bank for expenses of the project. The department reported project expenditures have totaled $47 million through August 2012, and the total project budget is $64 million. The Legislative Assembly in 2011 provided funding for an additional 59 FTE positions for the department. Legislative intent in Section 6 of House Bill No. 1015 provided 47 FTE positions for the new facility may be hired within 90 days of substantial completion. The Budget Section learned the department anticipates filling 50 FTE positions relating to the new facility in December 2012.

INSURANCE DEPARTMENT

Federal Patient Protection and Affordable Care Act

The Budget Section received quarterly reports from the Insurance Department pursuant to Section 9 of Senate Bill No. 2010 regarding the status of provisions of PPACA. The department reported it continues to coordinate with the United States Department of Health and Human Services to comply with components of PPACA. The Budget Section learned the department has joined the National Association of Insurance Commissioners' newly created Health Care Reform Regulatory Alternatives Working Group, which is a forum for states to discuss health insurance exchange options.

The department was awarded and the Legislative Assembly in 2011 approved a federal grant of $1 million for health insurance rate review enhancement and

$1 million for planning a health insurance exchange. The department reported of the $1 million of federal funds awarded for planning a health insurance exchange, $768,022 was transferred to the Department of Human Services for work on the Medicaid eligibility system upgrade. The Budget Section learned the department has requested an extension for $857,374 of the $1 million of federal funds awarded for health insurance rate review enhancement for costs of contracted actuaries in the future.

INDUSTRIAL COMMISSION

Environmental Protection Agency Litigation and Other Administrative Proceedings

The Budget Section received reports from the Industrial Commission pursuant to Section 28 of Senate Bill No. 2371 regarding the status of litigation involving the EPA's effort to regulate hydraulic fracturing. In Section 28 of Senate Bill No. 2371, the Legislative Assembly provided one-time funding of $1 million for expenses associated with litigation or other administrative proceedings. The Budget Section learned the EPA issued draft guidance for permitting hydraulic fracturing using diesel fuel in May 2012, and comments regarding the guidance were provided by the Industrial Commission in July 2012. The Industrial Commission reported in September 2012 it is unclear when the final EPA guidance is expected, and none of the appropriated funding has been expended.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Transportation Infrastructure Needs Study

The Budget Section received the Upper Great Plains Transportation Institute's final report on transportation infrastructure needs pursuant to Section 1 of Senate Bill No. 2325. The Legislative Assembly in 2011 appropriated $350,000 from the oil and gas impact grant fund to the Upper Great Plains Transportation Institute for updating and maintaining reports for transportation infrastructure needs for all county and township roads in the state. The Budget Section learned the study considers the combined effects of all economic activities on county and local roads throughout the state, including effects from agricultural, manufacturing, and oil-related developments. The Upper Great Plains Transportation Institute reported for the 2013-15 biennium the study identified $521 million of county and township road infrastructure needs in oil and gas-producing counties and an overall total of $834 million of county and township road infrastructure needs statewide. The Upper Great Plains Transportation Institute reported the 2013-15 biennium identified road infrastructure needs include $471 million for unpaved roads and $363 million for paved roads. The Budget Section learned the study is based on the most current production forecasts, traffic estimates, and roadway condition data available.

STATE WATER COMMISSION

Resources Trust Fund

The Budget Section received and approved requests from the State Water Commission pursuant to Section 19 of Senate Bill No. 2371 to expend an additional $50 million appropriated from the resources trust fund for purposes of defraying expenses of the agency. The Budget Section learned as of August 2012 oil extraction tax deposits into the resources trust fund totaled $174,228,473. Revised 2011-13 revenue estimates of oil extraction tax collections to be deposited in the fund total $390.1 million. The commission anticipates the June 30, 2013, balance in the resources trust fund will be $157.1 million. As requested by the commission, the Budget Section approved the following expenditures from the resources trust fund:

SB 2371 appropriation from the resources trust fund		$50,000,000
Requests approved by Budget Section		
June 2012		
Burleigh County storm water pump station	$1,282,400	
City of Sawyer property acquisitions	184,260	
Mouse River additional engineering for flood protection plan	1,926,750	
Future property acquisitions for flood control in McHenry and Ward Counties and the city of Minot as determined by the State Water Commission	9,342,590	
March 2012		
Burleigh County property acquisitions	1,425,000	
City of Minot	17,750,000	
City of Burlington	1,039,000	
Ward County	11,500,000	
December 2011		
City of Minot	2,500,000	
City of Valley City	3,000,000	
Souris River Joint Water Resource District	50,000	
Total 2011-13 biennium approved requests		$50,000,000
Remaining funding		$0

GAME AND FISH DEPARTMENT

Land Acquisition Requests

The Budget Section received and approved a request from the Game and Fish Department pursuant to section 20.1-02-05.1, to purchase 1,793.36 acres of Johnson Farms property located six miles to eight miles southwest of Edmore in Triumph and Fancher Townships. The Budget Section learned the property is located near the Edmore Coulee--a direct inlet to Devils Lake--and has a high abundance of wetlands scattered throughout the property making traditional agricultural use difficult. The $2.22 million purchase, based on an appraisal completed in July 2011 by Mr. Paul Vorachek of AgCountry Farm Credit Services of Grand Forks, was provided from $175,000 from the game and fish fund, $1,244,000 from the United States Department of Agriculture Natural Resources Conservation Service Wetland Reserve Program, $601,000 from a federal North American Wetlands Conservation Act grant,

$125,000 from the State Water Commission, and $75,000 from the North Dakota Natural Resources Trust.

DEPARTMENT OF TRUST LANDS

State Agency Unclaimed Property

The Budget Section received reports from the Department of Trust Lands 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 Legislative Assembly in 2003 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 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 Department of Trust Lands reported during the 2011-12 interim, its Unclaimed Property Division identified 12 state agencies with 20 unclaimed properties as of June 2011 and five state agencies with 15 unclaimed properties as of June 2010. Certified letters were mailed to those agencies. All 10 state agencies confirmed receipt of the certified mailing but did not submit a claim for the property listed.

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 2011 and in June 2012.

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, 2011, Job Service North Dakota reported the trust fund balance was $107.2 million, exceeding the projected trust fund balance of $106.3 million. The target for reserve adequacy was $104.3 million. 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 .88 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 2013 legislative session.

Recommendation

The Budget Section recommends Senate Concurrent Resolution No. 4001 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 63rd Legislative Assembly through September 30, 2015.

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, 2013, and June 30, 2015. Excluding federal fiscal stimulus funds, the report indicated for the 2011-13 biennium state agencies and institutions anticipate receiving $3.69 billion of federal funds, approximately $449.3 million more than appropriated. For the 2013-15 biennium, state agencies and institutions anticipate receiving approximately $2.85 billion of federal funds, $832.6 million less than is estimated to be received during the 2011-13 biennium.

The Budget Section reviewed a report on federal fiscal stimulus ARRA funds anticipated to be received by state agencies and institutions for the bienniums ending June 30, 2013, and June 30, 2015. The report indicated for the 2011-13 biennium state agencies and institutions anticipate receiving $88.1 million of ARRA funds, approximately $6.8 million more than the amount appropriated. State agencies and institutions anticipate approximately $10.6 million of ARRA funds will continue to be available in the 2013-15 biennium.

The Budget Section reviewed a report on programs that may be affected by the federal Budget Control Act sequestration process. The report provided information on programs that may be affected by federal funding reductions due to sequestration beginning in January 2013 as a result of provisions of the Budget Control Act of 2011. Sequestration is the process of cordoning off money that may have been authorized by Congress but is now prohibited from being spent. Sequestration will begin unless Congress reaches a deficit reduction agreement or Congress and the Administration change the law. Sequestration will result in automatic reductions to federal programs not specifically excluded as of January 1, 2013.

LEGISLATIVE COUNCIL STAFF REPORTS

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

- *62nd Legislative Assembly Legislative Changes to the Governor's Recommended Appropriations for the 2011-13 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.

- *62nd Legislative Assembly State Budget Actions for the 2011-13 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.
- *62nd Legislative Assembly Budget Status Report for the 2011-13 Biennium*. The report provides information on the status of the general fund and estimated June 30, 2013, ending balance, legislative changes to general fund revenues, and legislative appropriation changes to the executive recommendation.
- *2011* and *2012 North Dakota Finance Facts.* The annual pocket brochure contains information on economic statistics, the state budget, kindergarten through grade 12 education, higher education, human services, corrections, economic development, and transportation.
- *62nd Legislative Assembly State Budget Actions Supplement for the 2011-13 Biennium (Reflecting Legislative Actions From the November 2011 Special Session).* The supplement provides information on legislative changes to the April 2011 62nd Legislative Assembly state 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.
- *2011-13 Biennium Report on Compliance With Legislative Intent*. The report provides the current status of major budget changes and initiatives approved by the Legislative Assembly in 2011 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 2011 Senate Bill Nos. 2016 and 2369, the Budget Section considered agency requests that had been authorized by the Emergency Commission and forwarded to the Budget Section. From the June 21, 2011, meeting to the September 20, 2012, meeting, the Budget Section considered 28 requests, all of which were approved. The 28 Emergency Commission requests approved included expenditures of $733,604,860 of federal funds, one request for $7,000,000 of federal fiscal stimulus funds, and $59,656,411 of other funds; line item transfers totaling $1,020,000; approval of state contingencies appropriations of $360,314; and authorization of six FTE positions for the remainder of the 2011-13 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 two expenditures from the state contingencies appropriation that required Budget Section approval. In March 2012 the Attorney General requested and the Budget Section approved a request for $80,000 from the state contingencies appropriation for the operating expenses line item for expenses related to the multistate arbitration hearings concerning funds due the state from the Master Settlement Agreement with tobacco companies. In September 2012 the State Department of Health requested and the Budget Section approved funding of $280,314 from the state contingencies appropriation to increase the salaries and wages line item ($145,449) and the operating expenses line item ($134,865) and to add three FTE positions in the Environmental Health Section of the State Department of Health to provide inspection, outreach, investigation, and other services relating to water quality, wastewater disposal and treatment, and oil spill response and remediation in western North Dakota. As of September 2012, three expenditures for a total of $41,952 were authorized by the Emergency Commission from the 2011-13 state contingencies appropriation. The Emergency Commission approved expenditures from the state contingencies appropriation in June 2012 for the Attorney General of $30,000 and in September 2012 for the Secretary of State of $11,300 and for OMB of $652. Because the expenditures were less than $50,000, Budget Section consideration was not required. The remaining balance of the state contingencies appropriation is $297,734.

OTHER REPORTS

The Budget Section received other reports, including:

- Adjutant General - Information regarding an update on the 2011 flood disasters and related expenditures (June 2011, September 2011, December 2011, March 2012, June 2012, and September 2012).
- Adjutant General - Information on emergency disaster relief grants awarded to political subdivisions pursuant to 2009 Senate Bill No. 2012 (June 2011).
- Adjutant General - Information on the total funding by funding source for each disaster being paid for during the 2009-11 biennium (June 2011).
- Aeronautics Commission and other aviation industry representatives - Information on the impact of increased oil activity on aviation infrastructure (March 2012).
- Commission on Legal Counsel for Indigents - Information regarding the impact of increased oil activity on expenditures of the agency in the 2011-13 biennium and the planned 2013-15 biennium budget request (September 2012).

- Department of Agriculture - Information on the status of contract provisions relating to Wildlife Services (September 2011).
- Department of Commerce - Information on economic activity in western North Dakota and personal income growth in the state during the last five years (December 2011).
- Department of Human Services - Periodic information on the status of Medicaid claims processing (June 2011, September 2011, December 2011, March 2012, June 2012, and September 2012).
- Department of Public Instruction and other school representatives - Information on the impact of increased oil activity on schools (June 2012).
- Minot State University - Information on the effects of the 2011 flood on the university (September 2011, March 2012).
- Office of Management and Budget - Information on the state's economy, including information regarding economic sectors showing growth and oil industry statistics (June 2011, September 2011, December 2011, March 2012, and September 2012).
- 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 (June 2011, September 2011, December 2011, March 2012, and September 2012).
- Office of Management and Budget - Information on the estimated effect on 2011-13 revenues from 2011 flooding impacts on agricultural production and fall 2011 harvest complications (September 2011 and December 2011).
- Racing Commission - Information on potential revenue increases related to administrative rule changes and a potential licensing contract (December 2011).
- University of North Dakota School of Medicine and Health Sciences - Information on the residency program expansion project (December 2011).
- University of North Dakota and NDSU Foundations - Information on a new facility that will hangar helicopters owned by UND and the UND Aerospace Foundation constructed with donations to the Aerospace Foundation (June 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 Senate Bill Nos. 2016 and 2369, the Budget Section considered 28 agency requests that were authorized by the Emergency Commission. All requests were approved. The following is a list of agency requests approved from June 21, 2011, through September 20, 2012:

Adjutant General

- June 21, 2011 - To authorize the expenditure of $17.5 million from the state disaster relief fund pursuant to Senate Bill Nos. 2016 and 2369 for expenses related to flooding disasters throughout the state and for snow and ice disasters that have received presidential declarations.
- June 21,2011 - To authorize the expenditure of up to $6 million from the state disaster relief fund pursuant to Senate Bill No. 2369 as follows:

  Pursuant to subsection 2 of Section 4, up to $1.2 million available for flood disaster relief or disaster mitigation projects in eligible incorporated cities.

  Pursuant to subsections 3 and 4 of Section 4, up to $4.8 million for grants to political subdivisions for a portion of the local share to match federal funds on road grade raising projects in townships meeting inundated land provisions and grants to political subdivisions for a portion of the local share to match federal emergency relief funding for disasters occurring from January 2011 to June 2011.
- September 15, 2011 - To increase federal funds spending authority by $329.6 million from FEMA relating to the 2011 flood disaster. The additional federal funds relate to state direct disaster reimbursement ($20.7 million), public assistance ($274.5 million), and hazard mitigation ($48 million), less the remaining spending authority included in Senate Bill No. 2016 ($13.6 million).
- December 13, 2011 - To authorize spending for costs relating to state disasters from the state disaster relief fund of $57,110,411 in the 2011-13 biennium, of which $23.5 million was previously approved by the Budget Section in June 2011 and $33,610,411 is new spending authority.
- September 20, 2012 - A line item transfer of $250,000 from the grants line item to the radio communications line item to allow federal funding from the emergency management performance grant program to be spent by State Radio to enhance radio coverage of the State Radio tower system.

Attorney General

- December 13, 2011 - To increase federal funds spending authority by $100,000 to accept funds from the United States Department of Justice, Office of Community Oriented Policing Services, Child Sexual Predator Program for the capital assets line item ($100,000) to establish, train, and equip investigative teams of tribal, federal, and state law enforcement officers to identify and arrest offenders who are not in compliance with sexual offender registration requirements and to educate attorneys in the requisite elements of fact needed to charge an offender.
- March 13, 2012 - To utilize $80,000 from the state contingencies appropriation for the operating

expenses line item for expenses related to the multistate arbitration hearings concerning funds due the state from the Master Settlement Agreement with tobacco companies.

Department of Commerce

- June 19, 2012 - To increase spending authority by $7 million of federal fiscal stimulus funding from ARRA of 2009 that remains available to the state for grants to increase the energy efficiency of buildings, facilities, or processes.

Game and Fish Department

- March 13, 2012 - To increase the grants line item by $2.5 million to accept and disburse United States Fish and Wildlife Service Sportfish Restoration Act grants for the repair and reconstruction of Missouri River boating ramps damaged during the 2011 flood. The request requires 25 percent state matching funds which will be provided from Game and Fish Department operating funds.

Labor Commissioner

- March 13, 2012 - To increase federal funds spending authority by $165,400 to accept funds from HUD for the operating expenses line item to provide education, awareness, and information relating to the state's fair housing laws through announcements, paid advertising, and public speaking engagements.

Department of Public Instruction

- September 15, 2011 - To increase federal funds spending authority by $316,875 from the United States Department of Education for education jobs fund payments in the education jobs fund line item.

Parks and Recreation Department

- September 20, 2012 - To increase special funds spending authority by $150,000 to use state park revenue for the natural resources line item to provide a house at the Lewis and Clark State Park for a recently transferred park ranger.

School for the Deaf

- March 13, 2012 - To increase the capital assets line item by $200,000 of special funds from additional revenue generated by the use of the School for the Deaf campus and services by the Head Start program. The additional authority is to meet the funding requirements of master facility plan projects approved by the Legislative Assembly in 2011.

Secretary of State

- September 15, 2011 - To transfer $175,000 from the operating expenses line item to the salaries and wages line item. The transfer to the salaries and wages line item will allow the Secretary of State to hire temporary employees rather than contracting with a private staffing firm.
- June 19, 2012 - Addition of three new FTE positions and transfer of $295,000 from the operating expenses line item to the salaries and wages line item for the additional FTE positions, overtime, temporary staff, and salary adjustments to retain personnel.
- September 20, 2012 - To increase the salaries and wages line item by $196,000 from the Secretary of State's general services fund to pay overtime and temporary employees.

State Department of Health

- September 20, 2012 - To transfer funding of $280,314 from the state contingencies appropriation to increase the salaries and wages line item ($145,449) and the operating expenses line item ($134,865) and to add three FTE positions in the Environmental Health Section of the State Department of Health to provide inspection, outreach, investigation, and other services relating to water quality, wastewater disposal and treatment, and oil spill response and remediation in western North Dakota.

Tax Commissioner

- June 21, 2011 - For a line item transfer of $300,000 from the salaries and wages line item to the homestead tax credit line item ($150,000) and the disabled veterans credit line item ($150,000) to allow for full distribution of tax credits under both programs for the 2009-11 biennium.
- September 20, 2012 - To increase federal funds spending authority by $115,000 from the motor fuel tax enforcement program for the operating expenses line item ($65,000) and the capital assets line item ($50,000) for enhanced motor fuel tax enforcement activities.

Department of Transportation

- June 21, 2011 - To increase the grants line item by $10 million of federal emergency relief funding from the Federal Highway Administration to reimburse counties and cities for costs associated with roadways damaged by high water levels during 2010.
- March 13, 2012 - Request to increase the grants line item by $1 million to accept and disburse Federal Transit Administration grant funding to local transit providers to replace transit buses.
- March 13, 2012 - Request to increase the grants line item by $906,614 to accept and disburse Federal Railroad Administration grant funding to the Red River Valley and Western Railroad ($305,239) and Northern Plains Railroad ($601,375) for reimbursement of costs related to disasters in 2009.
- March 13, 2012 - Request to increase federal funds spending authority by $349,131 to accept commercial driver's license program improvement grant funds from the Federal Motor Carrier Safety Administration for the operating expenses line item ($216,271) and capital assets line item ($132,860). The funding is to be used for RoadTest hardware and software and related training.
- March 13, 2012 - Request to increase the grants line item by $2 million, from $6.9 million to

$8.9 million, to distribute additional funds from the public transportation fund to local public transit agencies. The additional funding is available due to revenues in the fund exceeding estimates.

- March 13, 2012 - Request to increase the grants line item by $251,840 to accept and disburse federal National Highway Traffic Safety Administration high fatality rate grants.
- March 13, 2012 - Request to increase the operating expenses line item by $1.2 million of federal funding for snow removal and maintenance services on United States Air Force missile site roads.
- March 13, 2012 - Request to increase the grants line item by $10 million to accept and disburse United States Department of Transportation TIGGER III grant funding to rebuild a 20-mile segment of railroad track and two railroad bridges near Churchs Ferry.
- March 13, 2012 - Request to increase spending authority by $377.1 million to accept and expend Federal Highway Administration emergency relief funding of $344.7 million and required local political subdivision matching funds of $32.4 million. The spending authority request is for the operating expenses line item ($64.67 million), capital assets line item ($269.73 million), and grants line item ($42.7 million). The request requires $45.6 million of state matching funds and $32.4 million of matching funds from local political subdivisions.

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Commission on Alternatives to Incarceration was created by 2005 House Bill No. 1473. 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.

In addition to its statutory study directive, the Legislative Management assigned to the commission the responsibility to conduct the study directed by 2011 Senate Concurrent Resolution No. 4001. That resolution provided for a study of the imposition of fees by courts at sentencing and other fees that are imposed upon offenders.

Commission members were Senators Stanley W. Lyson (Chairman), Dave Oehlke, and Connie Triplett; Representatives Eliot Glassheim, Lawrence R. Klemin, and William E. Kretschmar; 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 Lisa McEvers; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Carol K. Olson and Interim Director Maggie Anderson; 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 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

BACKGROUND

Department of Corrections and Rehabilitation

The Legislative Assembly in 2011 appropriated $159,565,919 from the general fund for the Department of Corrections and Rehabilitation for the 2009-11 biennium. The appropriation bill, House Bill No. 1015, also appropriated to the department $31,606,150 in special funds. The appropriation for the department provided for an increase of 59 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 794.29.

The appropriation to the department included $27,584,656, an increase of $816,501 from the 2009-11 biennium appropriation, for contract housing and transitional facilities for male inmates housed at the Missouri River Correctional Center, county jails, and private facilities. The department was appropriated $8,458,683 to contract with the Dakota Women's Correctional and Rehabilitation Center to house female inmates.

House Bill No. 1015 also provided additional funding for the prison construction project. The Legislative Assembly in 2009 provided an appropriation of $64 million, of which $19,465,804 was from the general fund and $44,534,196 from the State Penitentiary land fund, to the Department of Corrections and Rehabilitation for completing the renovation and expansion project at the State Penitentiary. Funding from the State Penitentiary land fund was to include interest income earned on money in the fund. Because the department anticipated interest income on money in the State Penitentiary land fund to be $1.5 million less than projected due to lower than anticipated interest rates, the Legislative Assembly in 2011 authorized the department to borrow up to $1.1 million from the Bank of North Dakota for the purpose of defraying the expenses of the Penitentiary project during the 2011-13 biennium.

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 July 2012, the State Penitentiary housed 526 male inmates. The James

River Correctional Center in Jamestown is classified as a medium security housing facility and, as of the end of July 2012, housed 411 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 July 2012, the Missouri River Correctional Center housed 151 inmates.

The division offers addiction treatment services, a sexual offender treatment program, and mental health programs through its treatment department. The division's education program offers a variety of education programs, skills training, and vocational programs. In addition, the division offers work experience through Roughrider Industries.

The department contracts with Community, Counseling, and Correctional Services, Inc., to operate the Bismarck Transition Center and manages the Tompkins Rehabilitation and Correction Center. The Tompkins Rehabilitation and Correction Center is a Department of Corrections and Rehabilitation-funded program at the State Hospital. The center consists of three 30-bed wards--one ward for females and two wards for males.

Parole and Probation Division

The department has 15 offices across the state staffed by parole and probation officers who manage over 5,000 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 operates or participates in drug court programs, global positioning monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sexual offenders; and contracts for services with half-way houses.

Dakota Women's Correctional and Rehabilitation Center

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. The prison at the Dakota Women's Correctional and Rehabilitation Center consists of a 16-bed orientation unit, 70-bed minimum security unit, 40-bed medium security unit, and a 5-bed high security unit. As of the end of July 2012, the Dakota Women's Correctional and Rehabilitation Center housed 132 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 through an accredited junior high and high school.

2009-10 Interim Study Recommendations and 2011 Legislation

During the 2009-10 interim, the commission studied and received testimony regarding several alternatives to incarceration programs. At the conclusion of the 2009-10 interim, the commission made several recommendations, and the Governor and the Legislative Assembly responded to many of the recommendations.

2011-13 Executive Budget

The commission recommended 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 Legislative Assembly included within the budget for the Department of Human Services $1,594,025, an increase of $112,452 over the 2009-11 biennium.

The commission recommended 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 Legislative Assembly in Senate Bill No. 2275 appropriated $375,000 from the general fund for the biennium to support community service programs.

The commission recommended 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. The Legislative Assembly included within the budget for the Department of Corrections and Rehabilitation $815,000 for room and board expenses for individuals admitted to faith-based treatment programs, which is essentially the same amount provided during the previous biennium.

Work and Education Release Bill

The commission recommended 2011 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 Assembly enacted the bill.

Community Service and Other Fees Study

The commission recommended 2011 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 Assembly passed the resolution and the study was assigned to the commission.

Short-Term Shelter Care Bill

The commission recommended 2011 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. The bill failed to pass the Senate. However, the Legislative Assembly included a total of $200,000 in the Department of Human Services budget to continue the short-term shelter care and assessment program.

Other Recommendations and Statements

The commission expressed its support for the Read Right program.

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

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

The commission expressed 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, expressed continued support for the maintenance of a case manager position for the Cass County Justice and Mental Health Collaboration Project.

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.

Recidivism

The commission received a report from the Department of Corrections and Rehabilitation relating to recidivism rates. The department has adopted the Association of State Correctional Administrators' definition of recidivism, which measures recidivism in several areas over 12, 24, and 36 months. Although the overall recidivism rate of about 35 percent is better than most states and significantly better than the national average, the department expects to see continued decreases in that rate, in part due to the availability of well-paying jobs in the state.

The commission received testimony from representatives of the department relating to the implementation of evidence-based practices designed to reduce recidivism. Through cognitive behavioral interventions, the department is able to work with offenders to address the thought process of the offender which leads to criminal behavior and to focus on changing that thought process to help make the offender less likely to engage in behavior that will lead to reoffending. The evidence-based practices being implemented include completing an assessment of the risk and needs of each offender, providing the offender intrinsic motivation, targeting interventions specific to each offender, providing directed skills training, increasing positive reinforcement, and engaging in ongoing support in the community. The practices are designed to hold offenders accountable while providing opportunities for change. Because the evidence-based practices require three years of data to accurately measure the results of the practices, the department likely will not have full measurements of the success of the practices until at least 2015.

Prison Education Programs

A representative of the Department of Corrections and Rehabilitation provided testimony regarding education programs implemented by the department. The department reorganized the education programs offered by the department to combine the adult and youth programs under one leadership team with the goal of more effectively and efficiently sharing resources and best practices. Because approximately 24 percent of the offenders in the state correctional system do not have a high school diploma or a general equivalency diploma, evidence-based programs have been implemented to reduce risk and recidivism. During the 2009-11 biennium, 136 of the 144 participants in the general educational development program earned a general equivalency diploma. In addition, the Read Right program, which has been successful with youth, has been implemented with adults in the system. The Interactive Video Network has been used to provide classes to adult women in Dickinson.

Representatives of the department provided the commission information regarding reentry programs designed to teach individuals how to obtain and keep jobs, including the Choices program which is a career development program implemented by the department. Computer applications and vocational programs are provided by Bismarck State College and other postsecondary educational opportunities are available through Bismarck State College and North Dakota State College of Science. In addition, the department provides opportunities to take correspondence courses through two out-of-state institutions. Because federal educational grants are no longer available for incarcerated individuals, it has become more difficult to provide and pay for the educational opportunities, but the department is working with Bismarck State College to use the work study program and federal supplementary educational

opportunity grants to provide educational opportunities for inmates.

Work Release and Transition Programs

After its 2009-10 interim study, the commission recommended 2011 House Bill No. 1028 which allows the department to expand the availability of work release programs for individuals who are required to serve 85 percent of their sentences. The change allows the department to expand the program to allow those individuals to participate in work release during the last six months of their sentences. Because the Missouri River Correctional Center was forced to be evacuated for five months during the summer of 2011 due to flooding, the impact of the expansion of the availability of work release had been delayed. However, in November 2011, the Department of Corrections and Rehabilitation began reviewing applications for work release under the expanded release provisions.

The Bismarck Transition Center continues to receive referrals from the department to house individuals who are in the last few months of their sentences. An offender at the center is required to work to pay for a portion of the offender's room and board, pay fines and fees, and save money to be used upon release. In addition, each offender must receive approval from a case manager with respect to weekly spending. Testimony from a representative of the center stated the goal of the program is to allow an offender to save money in preparation for discharge and to get started in a job that may be retained upon discharge.

The commission received a report from representatives of the Bismarck Transition Center regarding a proposal to develop a program through which the center would work with tribal governments in the state to provide transition programs for tribally committed offenders. Under the proposed program, tribes would join a cooperative to help deliver tribal residents who have committed offenses to the center, which could help divert offenders from the state and federal criminal justice systems.

Performance-Based Sentence Reduction

The commission received a report regarding performance-based sentence reduction which was implemented in 1991 to replace the "good time" law that had been in effect. Under the performance-based sentence reduction law and policy, as implemented by the Department of Corrections and Rehabilitation, inmates must meet performance criteria such as participation in court-ordered or staff-recommended treatment and education programs to earn up to five days of good time per month for each month of the sentence imposed. Under the performance-based sentence reduction policy, inmates may not be credited for any sentence reduction for time spent in custody before sentence and commitment, for time under supervised probation, or for any sentence for which the incarceration time is six months or less. An inmate who is required to serve 85 percent of a sentence is not eligible for sentence reduction. The policy also allows an inmate to receive up to two days per month of meritorious conduct sentence reduction for outstanding performance or heroic acts or as a special control and security measure.

Community Supervision and Electronic Monitoring

The commission received a report regarding offenders under supervision outside institutions. Because of the increasing migration of people into the state, there has been a substantial increase in the number of offenders under community supervision by the Department of Corrections and Rehabilitation. The report indicated the department is continuing to use electronic monitoring, including the use of alcohol monitoring devices, as a tool to supervise offenders paroled or released on probation. However, the primary barrier to expansion of electronic monitoring has been the high caseload of officers required to conduct the monitoring process.

Treatment Programs

The commission received a report regarding the use of drug courts. According to the report, there are approximately 90 individuals participating in adult drug courts at most times. It was also reported that the treatment program at the Tompkins Rehabilitation and Corrections Unit has steadily improved and has been awarded a rating of highly effective, which approximately 6 percent of all treatment programs achieve.

Department of Human Services

The commission received reports regarding programs under the supervision of the Department of Human Services, including efforts undertaken in coordination with the Department of Corrections and Rehabilitation and other entities, integrated dual disorder treatment, and the Robinson Recovery Center.

Coordination of Services

The commission was provided information regarding coordination of services between the Department of Human Services and the Department of Corrections and Rehabilitation. Within a few days of release from incarceration, an offender is scheduled for an appointment at a regional human service center to arrange for treatment and integration into the community. Five of the eight regional human service centers provide low-risk sexual offender treatment and provide services for victims. In addition, high-risk sexual offender treatment is offered through a contract provider. Each of the regional human service centers provides addiction treatment services and the Department of Human Services also contracts for residential treatment services. Although the release and integration programs are specific to individuals on probation and parole, officials from the State Penitentiary may refer other released offenders for treatment.

In addition to the programs coordinated with the Department of Corrections and Rehabilitation, the Department of Human Services offers other mental health and prevention services upon request from a state's attorney or a local law enforcement official, and the regional human service centers provide outreach on

Indian reservations and place a priority on a culturally competent manner of providing services to a variety of cultures. The commission also was informed that each regional human service center has an interagency council that interacts with volunteer groups, including the faith-based community.

The alternative for families cognitive behavioral therapy is a family-centered treatment designed to address family conflict, coercion and hostility, emotional abuse, and child physical abuse which has been implemented in regional human service centers and is a treatment therapy that may be effective in a juvenile drug court setting. Testimony from a representative of the Department of Human Services stated that although treatment and therapy programs are resource-rich, individuals will continue cycling through the system if the resources are not devoted to treatment and therapy.

Integrated Dual Disorder Treatment

The commission received a report indicating 25 to 35 percent of individuals with serious mental illness have an active substance abuse problem, and substance abuse among individuals with serious mental illness is three times greater than that of the general population. Studies have demonstrated individuals with dual disorders have an increased risk of relapse of mental illness; relapse of substance use; violence, victimization, and suicidal behavior; and homelessness and incarceration. However, studies also have demonstrated that an integrated approach to treatment of dual disorders is more effective than separate treatment.

In 2005 the Southeast Regional Human Service Center initiated a pilot project to examine and implement a dual disorder treatment program. The program was implemented in January 2007 and has resulted in reduced institutionalizations, symptoms, suicide rates, violence, victimization, and legal problems and improved physical health, work results, and family relationships of the participants while not requiring additional staff. Based upon the experience of the pilot project, additional regional human service centers are moving toward implementing integrated dual disorder treatment programs.

Robinson Recovery Center

The Department of Human Services continues to contract with the 40-bed Robinson Recovery Center in Fargo for residential treatment services. The commission received a report indicating the number of referrals to the center has increased significantly from 2011 to 2012. Of the referrals in 2011, 6.3 percent were from human service center regions in the western portion of the state and in 2012, 9.7 percent were from human service centers in the western portion of the state. However, the largest number of referrals continues to come from the region including Fargo. Although the primary addiction of clients admitted during 2011 and 2012 was identified as alcohol, the percentage of clients who were admitted with methamphetamine addiction increased from 2011 to 2012. According to the report, the center's rate of successful completion of the program increased from approximately 25 percent in fiscal year 2011 to about 38 percent in the 12 months prior to September 2012.

A representative of the Robinson Recovery Center informed the committee that the center will need about $200,000 to $250,000 in additional funding to sustain operations. The three areas of greatest need identified are the addition of a psychiatric nurse, funding for increased staff salaries, and funding to increase the number of beds available for female clients.

Class C Felony Theft Offenses

During the 2009-10 interim, the Judiciary Committee studied whether penalties for felonies are suitable for felonious behavior. As a part of the study, the committee reviewed criminal offenses for which a monetary amount triggers the grading of the offenses. The committee reported that most of the dollar amounts that trigger a penalty were set in the 1970s and 1980s. The committee considered, but did not recommend, a bill draft that would have amended several statutes that include a monetary amount that triggers the level of penalty.

Due to inflation, $500 in 1972 is equivalent to over $2,700 in 2012. Some of the members of the commission requested the commission to consider increasing the $500 threshold for triggering a Class C felony offense. In addition to accounting for inflation as a matter of fairness, proponents of increasing the $500 trigger contended an increase would result in a more efficient use of government services by reducing the need for prosecutorial resources, court-appointed defense counsel, and judicial resources. Furthermore, the commission was informed that although an offender convicted of a felony theft offense is not likely to serve time in the State Penitentiary if it is the first offense, it is not uncommon for such an offender to ultimately be incarcerated for the inability to fulfill the conditions of the sentence imposed. However, an offender sentenced to a felony will be subject to probation which is a costly correctional resource and which places an additional burden on probation officers who could be using their time to better monitor more dangerous offenders.

The commission received testimony from a representative of the North Dakota Association for Justice regarding the increased caseloads of state's attorneys in the western portion of the state due to a substantial increase in population. The testimony indicated some state's attorneys are experiencing up to 400 percent increases in caseloads. Because of the $500 trigger for felony theft offenses, state's attorneys are devoting limited resources to address property-related felony offenses which may affect the ability to effectively prosecute cases that involve bodily injury.

Representatives of defense attorneys testified that the $500 trigger for felony theft offenses is placing a burden on public defense resources. If the trigger was to be increased to $1,000 or $1,500, an offender convicted of stealing property valued at more than $500 but less than the higher threshold, would likely have a better opportunity to make restitution if convicted of a misdemeanor offense. Also, if the individual was

convicted of a misdemeanor offense, the individual would not be faced with the collateral issues associated with a felony offense, such as loss of voting rights and difficulty in obtaining jobs.

Opponents of increasing the trigger for felony theft offenses contended the theft of $500 is significant to the person whose property is stolen. In addition, the lower threshold may serve as a better deterrent to individuals contemplating committing an offense. It also was suggested that if the monetary triggers for felony offenses are adjusted for inflation, the amount of penalties for the offenses also should be adjusted.

Driving Under Suspension Offenses and Penalties

A member of the commission identified concerns with respect to large numbers of individuals who have been convicted of driving under suspension multiple times. Judges have indicated they are seeing a big problem with individuals driving under suspension and becoming subject to incarceration for multiple driving under suspension offenses, including situations in which the initial suspension was due to an offense such as unpaid parking fines. In addition, many individuals are either unaware of a suspension or unaware of the procedure to get a license reinstated. Because some individuals under suspension have lost driving privileges for significantly long periods of time, judges and law enforcement officials have noted that those individuals often lose hope of ever retaining a license and continue to drive unlicensed and uninsured. It was suggested that if a provisional license were to be available to individuals who are under suspension, the individuals would have an opportunity to work and stop the continual spiral.

The commission received a report from a representative of the Department of Transportation regarding the number of driving under suspension offenses. The report indicated there were 4,450 driving under suspension or driving under revocation convictions in 2008, 4,246 convictions in 2009, 4,164 convictions in 2010, and 4,073 convictions in 2011. Testimony from a representative of the department indicated the ability to issue a temporary restricted license is limited because a driving under suspension conviction is a criminal offense. An individual may not be able obtain a work permit if there are multiple criminal traffic violations within a 36-month period. Under a work permit, an individual may drive to work, go to medical appointments, and drive to purchase food. The department verifies the employment status of an applicant for a work permit and may impose requirements on the applicant before issuing the permit, such as participation in the 24/7 sobriety program. The testimony suggested the department would support an amendment to revise the law to allow an individual to obtain a work permit or temporary restricted license if the individual has no other violations beyond the driving under suspension violations.

Because judges and prosecutors have often been told by driving under suspension offenders that the offenders did not receive a notice of suspension, the members of the commission requested representatives of the Department of Transportation to provide information regarding the cost of mailing notices by certified mail. Representatives of the department reported the cost of mailing notices by certified mail would be approximately $1 million per biennium. The cost of each letter sent by certified mail would be approximately $6.46 and the department sends an average of 220 suspension or revocation letters per day. An analysis of the process of sending and receiving the documents by certified mail indicated it would take approximately five minutes to prepare the letter and three minutes to enter the receipt into the system. Therefore, the additional time needed to prepare, send, and receive the certified letters and receive the returned notices would require 3.5 FTE positions, which would cost approximately $700 per day or $185,000 per year.

The commission considered a bill draft to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses, expand the potential uses of a temporary restricted license, and require a court to dismiss a charge for driving under suspension if the defendant provides proof that the defendant has reinstated the operator's license within 20 days after the date of the offense.

Although the members of the commission generally supported the bill draft, concerns were raised concerning the expansion of potential uses of a temporary restricted license and the impact the change could have on law enforcement officers having to determine if an individual was operating the vehicle within the restrictions placed on the license. In addition, members of the commission questioned whether enough time was being allowed under the provision which would require a judge to drop a charge of driving under suspension if the defendant provides evidence of a reinstatement of the license within 20 days. Some members of the commission also objected to a provision in the bill draft which would have allowed the Director of the Department of Transportation to impose additional restrictions on a license beyond the restrictions specifically listed in the bill draft.

Conclusions and Recommendations

The commission recommends the Governor include increased funding in the executive budget for the Robinson Recovery Center, including funding specifically addressing the expansion of beds available for female clients.

The commission makes no recommendation with respect to the monetary thresholds that trigger felony offenses.

The commission recommends House Bill No. 1027 to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses; expand the potential uses of a temporary restricted license to include use for attendance at an appropriate licensed addiction treatment program, or a treatment program ordered by a court, or to use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender; and authorize a court to dismiss a charge for driving under suspension

if the defendant provides proof that the defendant has reinstated the operator's license within 60 days after the date of the offense.

IMPOSITION OF FEES UPON OFFENDERS STUDY

Background

2005-06 Interim and 2007 Legislation

During the 2005-06 interim, the commission received testimony regarding the funding of community service programs. The commission was informed that 14 community service organizations were operating in the state and approximately one-third of the programs' budgets were supported through grants from the state. However, the testimony also indicated that the level of state support varied greatly among the programs. The commission also received testimony from officials from the Department of Corrections and Rehabilitation indicating the community service programs were expected to become self-supporting within a few years after implementation. At the end of the interim, the commission recommended the Governor include in the executive budget $200,000 to be administered on a cost-share basis with local governments for the operation of community service programs.

Although funding was not included in the executive budget for community service programs, the Legislative Assembly enacted 2007 Senate Bill No. 2243, 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 2007 House Bill No. 1015 for the purpose of providing matching grants for community service supervision of offenders for the biennium.

2007-08 Interim and 2009 Legislation

During the 2007-08 interim, the commission again examined issues related to the community service programs. The commission received testimony indicating the community service fee was low on the hierarchy of fees that a court was required to impose, and defendants often did not have the financial resources to pay the fees imposed by courts. Therefore, many judges were not imposing the community service fee when ordering a defendant to perform community service. The commission was informed that less than $15,000 had been collected and deposited in the community service supervision fund during the first nine months of the 2007-09 biennium, and community service supervision grants were not likely to amount to the $125,000 appropriated from the fund for the biennium.

At the conclusion of the interim, the commission recommended 2009 Senate Bill No. 2028 to repeal the $50 community service supervision fee, and 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 amended Senate Bill No. 2028 to retain the community service supervision fee, but reduced the fee to $25. The Legislative Assembly also provided an appropriation of $62,500 from the community service supervision fund to the department in 2009 Senate Bill No. 2015 and provided an appropriation of $375,000 from the general fund to the Office of Management and Budget (OMB) in 2009 Senate Bill No. 2178 for community service supervision grants.

2009-10 Interim and 2011 Legislation

During the 2009-10 interim, the commission continued to examine issues relating to community service programs and the imposition of the community service supervision fee. The commission again was informed the community service supervision 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. 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 recommended Senate Concurrent Resolution No. 4001 to request the Legislative Management to study the imposition of fees at sentencing and other fees that are imposed upon offenders. The commission also recommended 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.

In addition to adopting the study resolution, the Legislative Assembly in 2011 enacted Senate Bill No. 2275, which appropriated $375,000 from the general fund for the biennium to support the community service programs. Senate Bill No. 2275 included a statement of legislative intent which provided that it is "the intent of the sixty-second legislative assembly that the funds appropriated in section 1 of this Act are considered ongoing funding and that the funds be a part of the office

of management and budget's base budget as a separate line item for the 2013-15 biennium." The annual funding for the community service programs during the 2011-13 biennium is to be allocated as follows:

- Barnes County - $9,091.
- Bismarck (urban) - $20,293.
- Bismarck (rural) - $10,667.
- Devils Lake - $10,747.
- Dickinson - $12,683.
- Fargo - $24,127.
- Grand Forks - $19,803.
- Jamestown - $13,883.
- Minot - $16,194.
- Richland County - $9,931.
- Rugby - $11,657.
- Sargent County - $8,086.
- Wells County - $8,189.
- Williston - $12,149.

Section 29-26-22(3) provides that community service supervision fees collected must be deposited in the community service supervision fund to be used to provide community service supervision grants subject to legislative appropriations. The Legislative Assembly in 2011 did not appropriate any funds from the community service supervision fund.

Community Service Programs

Community service programs were formed in North Dakota in 1993 to provide community-based alternatives to incarceration and allow juvenile and adult offenders to perform court-ordered community service obligations for the benefit of nonprofit organizations and local communities. Initially, the state provided funding to assist in establishing the programs. However, the Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006, due to reductions in funding and prioritization of programs. In addition to the state funding, the programs have received funding from local governments and from participation fees imposed on offenders ordered to perform community service.

Other Statutory Fees

Section 29-26-22 requires a court, upon a plea or finding of guilt, to impose a court administration fee in lieu of the assessment of court costs in all criminal cases except infractions. Under that section, the court administration fee must include a fee of $125 for a Class B misdemeanor, $200 for a Class A misdemeanor, $400 for a Class C felony, $650 for a Class B felony, and $900 for a Class A or AA felony.

Section 29-26-22 also provides that in all criminal cases except infractions, the court administration fee must include an additional $100. From the additional $100 court administration fee, the first $750,000 collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next $460,000 collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fees must be deposited in each fund.

Section 29-26-22 allows a court to waive the administration fee or community service supervision fee upon a showing of indigence. That section further provides that district court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A court may allow a defendant to pay any assessed administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.

Under Section 12.1-32-07, when a court orders probation for an offender, the court is required to order supervision costs and fees of not less than $45 per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. The court is also authorized to impose as a condition of probation that the defendant make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, pay any fine imposed, and support the defendant's dependents and meet other family responsibilities. In addition, as a condition of probation, the court may order the offender to reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant.

Section 12.1-32-08 authorizes the court to order the defendant to reimburse indigent defense costs and expenses as a condition of probation. That section also provides the reimbursement amount must include an application fee imposed under Section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. Section 29-07-01.1 imposes a nonrefundable application fee of $25 to be paid at the time an application for indigent defense services in the district court is submitted.

Section 12.1-32-08 requires a court, when restitution ordered by the court is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, to impose as costs the greater of the sum of $10 or an amount equal to 25 percent of the amount of restitution ordered, except the amount may not exceed $1,000. The state-employed clerks of district court are required to remit the funds collected to the State Treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court are required to remit the funds collected to the county treasurer to be deposited in the county general fund.

Section 12.1-32-16 provides that when an individual whose occupational, professional, recreational, motor vehicle operator, or vehicle license or registration has been suspended for nonpayment of child support is convicted of engaging in activity for which the license or registration was required, the court shall require as a condition of the sentence that the individual pay restitution in the amount of $250, or a higher amount set by the court.

Section 27-01-10 allows the governing body of a county to, by resolution, authorize the district judges serving that county to assess a fee of not more than $25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment. That section also allows the governing body of a city to, by ordinance, authorize a municipal judge to assess a fee of not more than $25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment. All fees paid to a district or municipal court must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to a private, nonprofit domestic violence or sexual assault program or a victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

Testimony and Commission Considerations

The commission received a report from a representative of the judicial branch regarding fees collected or imposed by the judicial branch. The report indicated that for the 2009-11 biennium, the judicial branch collected the following fees from offenders:

- Criminal court administration fees - $4,777,928.
- Bail bond forfeitures - $612,810.
- District court costs - $22,619.
- Indigent defense recoupment - $288,519.
- Indigent defense application fee - $180,517.
- Indigent defense administration fund - $1,566,192.
- Court facilities improvement and maintenance fund - $1,276,192.
- Restitution collection assistance fund - $47,923.
- Community service fee - $51,378.

The commission received testimony from a clerk of court regarding the collection of restitution. The testimony indicated collection of restitution is likely to become more efficient with the implementation of a new computer system that also is used to assist in the collection of fines, fees, and administrative costs. With the new system, clerks of court are able to better monitor the collection of costs and track payments. If a defendant is found to be in arrears on payments, the clerk of court may transfer the file to the court for action by the court, including an order to show cause.

The commission received a report relating to community service programs which indicated in fiscal year 2010, 2,478 offenders performed community service, 26 percent of which performed the community service in Fargo. In 2010 a total of 75,267.32 hours of community service were completed with a noncash value to the worksites of $602,138.56, based upon a wage of $8 per hour. The report concluded that the hours of community service performed in 2010 saved 9,408.4 days of prison or jail service, which at an estimated cost of $65 per day provided a savings of $611,547.

A representative of community service programs reported that the various community service programs are supported by a variety of funding sources including grants and a program fee that may be collected from offenders participating in the community service programs. It also was reported the amount of community service supervision fees being collected and deposited in the community service supervision fund has been decreasing and that due to an oversight in the 2011-13 biennium budgets for the Department of Corrections and Rehabilitation and OMB, there was no biennial appropriation of the funds deposited in the community service supervision fund. It was suggested that the fund should be placed under the budget of OMB. However, the representative of the community service agencies testified that although OMB has been the fiscal home for the general fund appropriation for community service programs during the last two bienniums, there is no guarantee the community service programs will be included in the office's budget in the future. It was argued that because the community service programs continue to be used by the courts and the programs have no state agency that oversees the various programs and budgets for the programs, the designation of a state agency to provide technical assistance and to serve as a fiscal home of the programs would help ensure the future viability of community service programs.

Conclusion

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

EDUCATION FUNDING AND TAXATION COMMITTEE

The Education Funding and Taxation Committee was assigned two studies. Section 2 of Senate Bill No. 2281 (2011) directed a study of concussion management with respect to youth athletics, including the nature, scope, and applicability of programs designed to prevent or eliminate concussions. Section 40 of Senate Bill No. 2150 (2011) directed an examination of short-term and longer-term state involvement in funding elementary and secondary education.

The Legislative Management also assigned to the committee the responsibility 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, Indian education issues and the development of criteria for grants to low-performing schools, the state's participation in the Compact on Educational Opportunity for Military Children, the failure of any school board to meet the statutory threshold for increasing teacher compensation, the status of the statewide longitudinal data system plan, and the provision of services to students in grades 6 through 8 who are enrolled in an alternative education program.

Committee members were Representatives RaeAnn G. Kelsch (Chairman), Bette Grande, Craig Headland, and Bob Hunskor and Senators Dwight Cook, Tim Flakoll, Joan Heckaman, and Gary A. Lee.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

CONCUSSION MANAGEMENT STUDY

Background

What Is a Concussion?

A concussion is a type of traumatic brain injury. It is generally caused by a bump, blow, or a jolt to the head. It can also occur from a fall or a blow to the body that causes the head and brain to move quickly back and forth.

Health care professionals often describe concussions as "mild" brain injuries because concussions are usually not life-threatening. Most people with a concussion recover quickly and fully. Some people, however, experience symptoms that last for days, weeks, or even longer.

Signs and Symptoms of a Concussion

According to the Centers for Disease Control and Prevention, concussion symptoms usually fall into four categories:

Thinking/ Remembering	Physical	Emotional/ Mood	Sleep
Difficulty thinking clearly	Headache	Irritability	Sleeping more than usual
	Fuzzy or blurry vision		
Feeling slowed down	Nausea or vomiting (early on)	Sadness	Sleeping less than usual
	Dizziness		
Difficulty concentrating	Sensitivity to noise or light	More emotional	Trouble falling asleep
	Balance problems		
Difficulty remembering new information	Feeling tired, having no energy	Nervousness or anxiety	

Some of these symptoms may appear immediately after an injury. Others may not be noticed for days or months. Sometimes, individuals do not recognize or admit that they are having problems. Sometimes, individuals do not understand why they are having problems and they do not associate their problems with their injury. The signs and symptoms of a concussion can be difficult to sort out and, early on, can be easily missed by the individual with the concussion, as well as by family members or even health care providers. People may look fine even though they are acting or feeling differently.

When to Seek Medical Attention

Concussions can, however, be life-threatening. A dangerous blood clot may form on the brain and crowd the brain against the skull. The Centers for Disease Control and Prevention therefore recommends that medical attention be sought if an individual who has been injured experiences:

- A headache that gets worse and does not go away;
- Weakness, numbness, or decreased coordination;
- Repeated vomiting or nausea; or
- Slurred speech.

An immediate emergency room visit is suggested if the individual who has been injured:

- Looks very drowsy or cannot be awakened;
- Has one pupil that is larger than the other;
- Is having convulsions or seizures;
- Cannot recognize people or places;
- Is becoming more and more confused, restless, or agitated;
- Is exhibiting other unusual behavior; or
- Loses consciousness.

Statistics

The Centers for Disease Control and Prevention estimates that 1.7 million individuals sustain traumatic brain injuries each year--1.3 million of those events result in emergency room visits wherein the patient is treated and then released. In roughly 20 percent of the cases, hospitalization is required and in approximately 3.8 percent of the cases, death is a result. The Centers

for Disease Control and Prevention also estimates that 75 percent of the traumatic brain injuries occurring each year are concussions--35.2 percent of the total traumatic brain injuries are the direct result of falls, 17.3 percent result from motor vehicle or other traffic accidents, 16.5 percent involve a "struck by/against" event, and 10 percent result from assaults.

Adults aged 75 and older have the highest rate of traumatic brain injury-related hospitalization and death. Male children below the age of four have the highest rate of traumatic brain injury-related emergency room visits. Children below the age of 14, however, account for nearly half a million of the annual emergency room visits for traumatic brain injury-related events.

Legislation

Genesis

While trauma-related disability and deaths in young athletes are relatively uncommon, given the vast number of students who participate in school-related or other organized sports, any such occurrence has a devastating effect on families and communities. In 2006, Zackery Lystedt was a middle school student. Playing late in the first half of a football game, his head hit the ground, he grabbed his helmet in pain, and he struggled to get up. Zackery made it to the sideline, sat out for about 15 minutes, and then went back in for the remainder of the game. Late in the fourth quarter, Zachery made a tackle and forced a fumble at the goal line. He was unsteady on his feet and, approximately 60 seconds later, he collapsed. He had suffered a concussion on the first hit. The second hit caused a brain hemorrhage. Five hours after the game, he had emergency surgery. He spent three months in a comma, nine months not being able to speak, and years in therapy. He remains in a wheelchair.

It is Zachery's name that is found in the title of Washington state's concussion law--legislation that has served as a model for 39 states in which similar legislation has been enacted and eight states in which the legislation is currently pending. All of the enacted legislation targets public schools or school districts. Some state legislatures extended requirements to nonpublic schools and others even included various private clubs, leagues, and organizations. While most of the legislation is very similar in intent and purpose, there are significant differences in detail and clarity. This is most noticeable with respect to directives that a student be removed from practice or play. Much of the legislation does not indicate who has the duty to remove a student and who has the power, i.e., who "must" and who "may" remove a student suspected of having a concussion.

North Dakota

Senate Bill No. 2281 (2011) requires school districts and nonpublic schools to be subject to a concussion management program. The law, which is codified in North Dakota Century Code Section 15.1-18.2-04, is silent with respect to how that concussion management program is developed, but very specific with respect to the program's content.

The concussion management program must set forth in clear and readily comprehensible language the signs and symptoms of a concussion. With respect to the removal of an injured student, North Dakota's law places specific obligations on specific individuals. An official has a duty to remove a student from competition, and a coach or an athletic trainer has a duty to remove a student from practice, training, or competition under the following circumstances:

1. If the student reports any sign or symptom of a concussion;
2. If the official, coach, or athletic trainer determines that the student exhibits any sign or symptom of a concussion; or
3. If the official, coach, or athletic trainer is notified that the student has reported or exhibited any sign or symptom of a concussion by a licensed, registered, or certified health care provider whose scope of practice includes the recognition of concussion signs and symptoms.

Once a student is removed, the student must be evaluated by a licensed, registered, or certified health care provider whose scope of practice includes the "diagnosis and treatment" of concussion. This individual must have a much higher level of training than the individual who is mentioned above and whose scope of practice must include only the "recognition" of concussion symptoms. A student may not return to practice, training, or competition unless the student or the student's parent obtains written authorization from a licensed, registered, or certified health care provider whose scope of practice includes the diagnosis and treatment of concussion and provides that authorization to the student's coach or trainer.

The concussion management program must also require that each official, coach, and athletic trainer receive biennial training regarding the nature and risk of concussion. The final component of the law provides that the student's school district or nonpublic school must ensure that before a student is allowed to participate in a defined athletic activity, both the student and the student's parent must document that they have viewed information regarding concussions incurred by students participating in athletic activities. This information must be provided by the student's school district or nonpublic school and may be in printed form or in a verifiable electronic format.

Study

During the course of the 2011 legislative session, it was suggested that the reach of Senate Bill No. 2281 should be extended to include other entities involved in youth athletics, e.g., political subdivisions such as municipalities and park districts, nonprofit organizations such as YMCAs, and even private for-profit establishments such as martial arts studios. It was ultimately decided that the feasibility and desirability of such an expansion should be examined through the interim study structure.

Before the committee was willing to address an expansion of the 2011 legislative enactment, the committee wanted to settle a more pressing issue.

Senate Bill No. 2281 required the removal of a student from practice, training, or competition under a variety of circumstances, including notification that the student has reported or exhibited any sign or symptom of a concussion by a licensed, registered, or certified health care provider whose scope of practice includes the recognition of concussion signs and symptoms. Senate Bill No. 2281 was considerably more limited, however, with respect to which health care providers could authorize the student's return to practice, training, or competition. In fact, the bill required that the authorization be provided by a licensed, registered, or certified health care provider whose scope of practice includes the diagnosis and treatment of concussion. Under Section 47-17-01, a physician's scope of practice includes the "diagnosis or treatment of diseases or injuries of human beings." While it was clear that a physician could provide the requisite authorization, it was not clear whether this privilege extended to other health care providers such as nurse practitioners, physician assistants, athletic trainers, and physical therapists.

The committee received testimony from various health care providers regarding their scopes of practice and the role that they believed they were able to play in the diagnosis and treatment of concussion. While the health care providers appeared to be in consensus with respect to who among them was capable of causing a student athlete to be removed from practice, training, or competition in the event a concussion was suspected, there was no consensus with respect to who among them could definitively diagnose a concussion and authorize a student's return. Physicians suggested that by virtue of diagnosing a concussion, one is determining that a student does not have a subdural hematoma, an epidural hematoma, a skull fracture, or any number of other injuries, some of which can be life-threatening or fatal. They stated that once a diagnosis is made, a number of health care providers can be involved in managing the concussion. They indicated that the determinations involved in diagnosing a concussion could not, however, be made on the sideline. Representatives of physical therapists stated that they had reviewed their scope of practice and concluded that physical therapists could diagnose a concussion. However, they believed that it was not necessary to diagnose a concussion in order to treat or manage it and suggested that a statutory reference to the evaluation and treatment or management of a concussion would be sufficient.

The committee asked that the various perspectives and concerns, to the greatest extent possible, be reflected in a bill draft and presented for the committee's consideration. The bill draft required that a student was to be removed from practice, training, or competition if the student reported any sign or symptom of a concussion; if the student exhibited any sign or symptom of a concussion; or if a licensed, registered, or certified health care provider, whose scope of practice includes the recognition of concussion signs and symptoms determined, after observing the student, that the student may have a concussion. The duty to remove the student was placed on each official, coach, and individual having direct responsibility for the student during practice, training, or competition.

Whereas current law requires that, once removed, the student be examined by a licensed, registered, or certified health care provider whose scope of practice included the diagnosis and treatment of concussion, the bill draft attempted to clarify the scope of practice issue by listing six providers who were capable, by training and experience, of evaluating a student who had been removed. The six providers were physicians, neuropsychologists, nurse practitioners, physician assistants, athletic trainers, and physical therapists.

If the evaluating provider determined that the student may have suffered a concussion, the bill draft required the provider to consult with the student's parent and determine an appropriate course of treatment. While current law conditioned the student's return upon presentation of a written authorization from a licensed, registered, or certified health care provider whose scope of practice includes the diagnosis and treatment of concussion, the bill draft conditioned the student's return upon presentation of a written authorization from a physician, a neuropsychologist, a nurse practitioner, a physician assistant, an athletic trainer after consultation with a physician, or a physical therapist after consultation with a physician.

The committee was told that, in most instances, athletic trainers and physical therapists function as part of a team approach designed to ensure the best possible outcome for a student athlete and in those instances where an athletic trainer or a physical therapist might be functioning independently, the bill draft merely required the individual to communicate, telephonically or otherwise, with a physician, as an additional safeguard in ensuring that nothing of medical consequence went unnoticed. Physicians testified that there would be a huge amount of liability to be shouldered in the event a serious injury was missed.

Although the bill draft accommodated many of the perspectives and concerns that had been articulated, there were a number of issues that individual groups still wished to have included, excluded, or otherwise addressed. There was a request that the bill draft include a safeguard to ensure that a coach could not, with nefarious intent, call for a star player from an opposing team to be removed. There was a request to replace the list of health care providers who could evaluate a student after removal with a reference to scopes of practice, and there was a request to require that those health care providers who were involved in the evaluation of a student or in authorizing the student's return to play have training in the evaluation and management of concussion.

The bill draft revision still required the removal of a student from practice, training, or competition if the student reported any sign or symptom of a concussion; if the student exhibited any sign or symptom of a concussion; or if a licensed, registered, or certified health care provider, whose scope of practice includes the recognition of concussion signs and symptoms determined, after observing the student, that the student

may have a concussion. The duty to remove the student was placed on each official, on a student's coach, and on the individual having direct responsibility for the student during practice, training, or competition.

The bill draft revision specified that, once removed, the student must be evaluated by a licensed health care provider who is acting within the provider's scope of practice and trained in the evaluation and management of concussion. If the student is believed to have suffered a concussion, the student may not return to practice, training, or competition until written authorization is granted by a similarly qualified health care provider.

The bill draft revision maintained the requirement that the written authorization be retained by the student's school district or nonpublic school for a period of 10 years after the conclusion of the student's enrollment. This timeframe was intended to span the precollegiate and collegiate playing years for most student athletes. The committee was, however, told that educational transcripts are retained for seven years and therefore directed that the 10-year requirement be reduced to seven, in the interest of synchronization.

The committee elected not to recommend extending the reach of concussion legislation beyond its present nexus of school districts and nonpublic schools. The committee was informed that the various public and private entities sponsoring youth athletics had done an excellent job of promoting concussion awareness and instituting programs and requirements to minimize concussion injuries among their participants and attain desired outcomes when injuries did occur.

Recommendation

The committee recommends House Bill No. 1028 to maintain the required removal of students from practice, training, or competition in the event a concussion is suspected and permit their return only upon the authorization of a licensed health care provider who is acting within the provider's scope of practice and trained in the evaluation and management of concussion.

EDUCATION FINANCE STUDY

Background

North Dakota Constitutional Directives

Article VIII, Section 1, of the Constitution of North Dakota provides:

> A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

The words in Section 1 have been unchanged since their enactment in 1889.

Article VIII, Section 2, of the Constitution of North Dakota follows with the directive that:

> The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

Article VIII, Section 3, of the Constitution of North Dakota further requires that "instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind." Finally, Article VIII, Section 4, of the Constitution of North Dakota directs the Legislative Assembly to "take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements."

Since the 1930s, the state has attempted to meet its constitutional directives by providing some level of financial assistance to local school districts. In the mid-1950s, a legislative interim Education Committee determined that the state assistance was set at arbitrary levels. The committee also noted that existing statutes did not require "uniform minimum local efforts through the taxation of all property by the local school districts in an effort to support their own education systems, to the degree that is believed desirable by the Committee." It was the 1957-58 interim Education Committee that recommended passage of a state foundation aid program.

Litigation - *Bismarck Public School District No. 1 v. State of North Dakota*

From its inception in 1959, the foundation aid program generated both discussion and disgruntlement. Perceptions of funding insufficiencies and funding inequities eventually lead to the initiation of legal action. In 1989, the complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity, which were directly and unconstitutionally based upon property wealth. Siding with the plaintiffs, the district court declared the North Dakota school financing system to be in violation of Article VIII, Sections 1 and 2, and Article I, Sections 21 and 22, of the Constitution of North Dakota. The Superintendent of Public Instruction was directed to prepare and present to the Governor and the Legislative Assembly, during the 1993 legislative session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts. The Superintendent's recommendations included increasing the per student payment, establishing a uniform 180 mill county levy, allowing school districts a 25 mill optional levy, distributing tuition apportionment in the same manner as

foundation aid, providing that federal and mineral revenues in lieu of property taxes and districts' excess fund balances be part of a guaranteed foundation aid amount, requiring that all districts with fewer than 150 students become part of a larger administrative unit, and providing $25 million for a revolving school construction fund.

When the case was appealed to the North Dakota Supreme Court, only three of the five justices held that the state's education funding system was unconstitutional. In accordance with Article VI, Section 4, of the Constitution of North Dakota, four justices are required for such a declaration.

Directional Changes - Exploring Alternatives in the 1990s - Initial Discussions

Although significant changes to the foundation aid program were still several years away, the 1990s heralded a directional shift in the discourse surrounding education funding. Much of that discourse was generated by demographic data. For the most part, the baby boom generation had finished having children and their successors had chosen to delay starting families and to have significantly smaller families. This decline had been especially noteworthy in an area covering 279 counties in six states. The area included the states of Wyoming and Montana, half of Kansas, approximately three-fourths of Nebraska, and most of South Dakota and North Dakota.

In this state, much of the demographic decline had been attributed to changes in agriculture. What was once a highly labor-intensive industry was rapidly becoming a highly capital-intensive industry. People who at one time resided in rural areas because of their involvement in agriculture had to move elsewhere to take advantage of job opportunities. In 1900, over 90 percent of this state's population resided in rural areas. By the waning years of the 20th century, over two-thirds were residing in the 17 "urban" communities having more than 2,500 residents.

Birthrates were examined, death rates were examined, and outmigration rates were examined. Best estimates indicated that the state's elementary and secondary student population would decline from a 1997 level of 121,708 to 100,152 students by the year 2007. Legislators were told that fewer children and fewer taxpayers would affect the number of school closures, the number of school district consolidations, and the educational opportunities for children. While the legislative discourse addressed the multitude of school districts and the ability to provide quality educational services into the future, the discourse also recognized that an evolving issue was the reliance on property taxes as a principal funding source for education.

Reliance on Property Taxes

The 1995-96 interim Education Finance Committee was told that school districts receive revenue from two primary sources--the state general fund and local property taxes. The committee was also told that property taxes traditionally were favored as a significant component in the funding of elementary and secondary education because they were a stable source of dollars. Unlike income taxes, energy taxes, or sales taxes, property taxes were not subject to economic fluctuations. They were, however, becoming subject to concerns regarding the continued ability of property owners to meet the ever-increasing demands being placed on that form of taxation.

In response, the Superintendent of Public Instruction proposed placing a 2 percent earmarked tax on North Dakota taxable income. Seventy-five percent of the amount raised was to be returned to school districts so that they could lower property taxes and the remaining 25 percent was to be retained by the state and redistributed through the foundation aid formula. The school district mill levy cap would have been lowered from 185 mills to 110 mills. Proponents of this concept suggested that issues of sales tax regressivity would be avoided, cities levying sales taxes would not be as opposed to an income tax hike as they would to a state sales tax hike, and the Legislative Assembly could change the distribution percentage to provide less property tax relief but a higher state-level investment in education. At the time, the state share of education revenues was 42 percent and the local share was 46 percent. This proposal would have increased the state share to 62 percent.

Opponents suggested that the proposal would have no impact on districts that had unlimited taxing authority and pointed out there was no guarantee that the money raised would not be redirected by the Legislative Assembly to other state needs, as opposed to being dedicated to elementary and secondary education. They stated that the end result could in fact be an increase in income taxes with no long-term reduction in property taxes.

The North Dakota Stockmen's Association had also proposed an increase in the personal income tax rate, together with an increase in the corporate tax rate. Like the Superintendent of Public Instruction's proposal, this too would have raised $100 million annually. It was suggested that 20 percent could be considered new money for education while 80 percent could be returned in the form of property tax relief. School districts would have had their mill levies lowered by the property tax replacement funding and they would have been allowed to increase their mill levies by only 2 percent each year. This proposal was also dismissed as merely a way of shifting the burden of taxation from those who own property to those who generate income.

The committee did, however, discuss the possibility of capping school district mill rates, provided the state appropriation grew by a certain percentage each biennium. This too was rejected. The belief was that while a specific state appropriation would serve to prevent school districts from increasing their mill levies, nothing was being done to prevent other local taxing entities from laying claim to property tax revenues for their purposes.

Litigation - *Williston Public School District No. 1 v. State of North Dakota*

In 2003, the school districts of Williston, Devils Lake, Grafton, Hatton, Larimore, Surrey, Thompson, United, and Valley City filed suit against the state alleging that the state's system of funding education was inadequate and that the system unfairly and arbitrarily resulted in widely disparate funding, inequitable and inadequate educational opportunities, and unequal and inequitable tax burdens.

One month before the start of the trial, the plaintiffs and the defendants determined that:

> [I]t is desirable and beneficial for them and for the citizens of the State of North Dakota to stay this Act and provide the North Dakota Legislative Assembly the opportunity to settle, compromise, and resolve this Action in the manner and on the terms and conditions set forth in this Agreement.

The terms and conditions required that the Governor, by executive order, create the North Dakota Commission on Education Improvement and submit to the Legislative Assembly in 2007 an executive budget that includes at least $60 million more in funding for elementary and secondary education than the amount appropriated by the Legislative Assembly in 2005.

In return, the plaintiffs agreed to stay the litigation until the close of the 2007 legislative session and at that time to dismiss the action without prejudice if the Legislative Assembly appropriated at least the additional $60 million and approved a resolution adopting the North Dakota Commission on Education Improvement as a vehicle for proposing improvements in the system of delivering and financing public elementary and secondary education. The plaintiffs also agreed that if the conditions were met, they would not commence another action based upon the same or similar allegations before the conclusion of the 2009 legislative session.

North Dakota Commission on Education Improvement

The North Dakota Commission on Education Improvement, as initially configured, consisted of the Lieutenant Governor--in his capacity as the Governor's designee, the Superintendent of Public Instruction, four members of the Legislative Assembly, four school district administrators, and three nonvoting members representing the major education interest groups. The commission was instructed to recommend ways in which the state's system of delivering and financing public elementary and secondary education could be improved and, within that charge, to specifically address the adequacy of education, the equitable distribution of funding, and the allocation of funding. The commission's recommendations became the basis for Senate Bill No. 2200 (2007).

Education Finance - 2007 Legislative Session

Senate Bill No. 2200 presented a revolutionary new education funding formula. The bill consolidated education dollars that had been assigned to a variety of previously existing funding categories and established new weighting factors that reflected the added costs of providing education to certain categories of students and the added costs of providing various statutorily mandated services. In addition, the new formula factored in the variable cost of providing services and programs in small, medium, and large school districts.

To ensure a relatively consequence-free transition from the prior formula to the new formula, provisions were inserted to require a minimum percentage growth in the per student payment and to likewise cap a potential windfall in a district's per student payment. The mill levy equalization factor, also known as the mill deduct, was repealed, as were supplemental payments. In their stead, the new formula required equity payments, which accounted for deficiencies in a district's imputed taxable valuation, and special provisions accommodating districts with abnormally low taxable valuations. The formula also included a reduction for districts that levied fewer than 150 mills during the first year of the biennium and fewer than 155 mills during the second year of the biennium.

Special education payments were increased and the state took on the full obligation of paying any amount over 4.5 percent of the average cost per student for the most costly 1 percent of special education students statewide.

Based on the commission's recommendations, the Legislative Assembly also increased the availability of capital improvement loans for needy school districts, provided increased funding for new career and technical education centers and programs, and provided funding for full-day kindergarten programs. Finally, the Legislative Assembly reauthorized the North Dakota Commission on Education Improvement and directed that it focus its attention on developing recommendations regarding educational adequacy.

The 2007-09 funding for elementary and secondary education had been increased by more than $92 million over the previous biennium.

Study of Educational Adequacy - Picus Report

After the 2007 legislative session, the North Dakota Commission on Education Improvement contracted with Lawrence O. Picus and Associates (Picus) to identify the resources needed in order to ensure an adequate education for all students. Picus began with the premise that adequacy requires all students to be taught the state's curriculum and that strategies must be deployed to use resources in ways that will double student performance on state tests over the coming four to six years. Picus determined very early in its efforts that, while North Dakota students performed reasonably well on state tests, only 30 to 40 percent of North Dakota students performed at or above the proficiency standard measured by the National Assessment of Educational Progress. It was Picus' determination that North Dakota students would need to achieve at much higher levels if they were to be deemed fully prepared, upon high school graduation, for either college or the workplace. Picus concluded that existing state per student payments, coupled with the yield of 185 mills on 88.5 percent of the

state average imputed valuation per student, amounted to approximately $7,024 per student, whereas, in order to achieve adequacy, the expenditure per student would need to be $7,293.

Picus also insisted that expending a specific dollar amount per student would not achieve the desired results unless the expenditures were linked to certain programmatic strategies that guaranteed the desired results. Without such linkages, the final effect would be nothing other than the existing education system at a much higher cost to taxpayers.

Picus' recommendations, therefore, included class size maximums for core courses, increases in the percentages of specialists and elective teachers, instructional coaches for professional development, tutors, increases in weighting factors for new English language learners, funding of extended day programs, funding for increased services to gifted and talented students, increases in guidance counselors per student, the creation of support positions that could be filled by social workers, nurses, psychologists, family outreach persons, caseworkers, or additional guidance counselors, depending on a school's needs, and sufficient numbers of noninstructional aides, librarians, administrative staff, and clerical staff.

In addition, Picus recommended increases in professional development days and suggested that technology funding should be included at the rate of $250 per student, student activities should be included at the rate of $200 per elementary student and $250 per high school student, central office personnel should be included at the rate of $600 per student, and school and school district maintenance and operations funding should be included at the rate of $600 per student.

Whereas Picus' definition of adequacy would have required that all students be taught the state's curriculum and that resources be used in ways that would double student performance on state tests over the coming four to six years, the definition of adequacy used by the commission would require that all students complete a rigorous core curriculum established by the state, demonstrate proficiency on state assessments, and score above the national average on the ACT, the SAT, or WorkKeys.

Education Finance - 2009 Legislative Session

After reviewing the Picus report, the North Dakota Commission on Education Improvement made its own recommendations to the North Dakota Legislative Assembly. House Bill No. 1400 (2009) was the vehicle by which many of the policy recommendations were enacted. House Bill No. 1013 (2009) contained many of the appropriations.

North Dakota Commission on Education Improvement - Recommendations	2009 Legislation (House Bill Nos. 1400 and 1013)
Provide education funding "adequacy" by increasing the appropriation for elementary and secondary education funding by $100 million	Enacted
Provide $10 million for deferred maintenance	$85.6 million was appropriated as one-time state grants for maintenance
Increase the special education weighting factor from .067 to .07	Enacted
Establish an "at-risk" factor of .05	A factor of 0.25 was enacted (Effective July 1, 2011)
Establish three levels of English language proficiency and assign weighting factors of .20, .05, and .02	Factors of .30, .20, and .07 were enacted
Discontinue the minimum mill levy offset, which was triggered at 155 mills	Enacted
Apply the school district ending fund balance deduct after all other calculations except those specifically excluded by law (and if depleted, apply the deduct to transportation payments)	Enacted (by statute and through rule)
Provide that the state aid per weighted student unit in 2009-10 should be no less than 108 percent of the baseline funding per weighted student unit and no less than 112.5 percent thereafter	Enacted
Provide that the state aid per weighted student unit in 2009-10 should not exceed 120 percent of the baseline funding per weighted student unit and should not exceed 134 percent thereafter	Enacted
Reauthorize school district planning grants	Enacted
Reauthorize the membership and duties of the North Dakota Commission on Education Improvement	Enacted
Continue the requirement that 70 percent of new money be used to increase teacher compensation	Enacted with an exclusion for one-time state grants for maintenance
Provide that if a district experienced an abnormal reduction in federal funds during the 2006-07 base year, that district could use a two-year average to compute its base year	Enacted
Retain the equity payments and provide that reorganized districts and those that receive property through dissolution should not have their equity payments reduced for two years	Enacted
Beginning in 2010, require one licensed tutor for every 400 students in kindergarten through grade 3, in addition to those funded through Title I and authorize the substitution of instructional coaches	Enacted (referred to as student performance strategists)
Increase staffing levels for counselors in accredited schools from 1 FTE position per 450 students to 1 FTE position per 300 students in grades 7 through 12 and authorize one-third of these positions to be filled by career advisors	Enacted
Appropriate $390,000 to the Department of Career and Technical Education for the training, certification, and supervision of career advisors	Enacted
Appropriate $123,618 to the Superintendent of Public Instruction for 1 FTE position to monitor career advisors	Enacted
Fund elementary summer programs for remedial mathematics and remedial reading and beginning July 1, 2010, fund summer science and social studies courses, as well as mathematics and reading, for grades 5 through 8	Enacted

North Dakota Commission on Education Improvement - Recommendations	2009 Legislation (House Bill Nos. 1400 and 1013)
Create a merit diploma that requires three years of mathematics, three years of science, and three years of focused electives emphasizing languages, fine arts, and career and technical education for a total of 22 units	Enacted (requirements for a high school diploma)
Authorize certain students to select an optional high school curriculum that requires two years of mathematics, two years of science, and three years of focused electives, for a total of 21 units	Enacted
Provide a scholarship in the amount of $750 per semester for students who meet stated academic and assessment requirements	Enacted
Require a formative or an interim assessment such as the measures of academic progress for all students in grades 2 through 10	Enacted as a requirement for all students in grades 2 through 10 at least once each year
Require that a Career Interest Inventory be given to all students at least once in grades 7 through 10	Enacted as a requirement for all students at least once in grades 7 and 8 and once in grades 9 and 10
Require and fund the cost of a summative assessment before graduation	Enacted
Provide $560,000 in state aid for the summative assessments and $535,000 in state aid for the interim assessments	Provided additional state aid to reimburse districts for the cost of the required assessments
Require that all schools use PowerSchool by the beginning of the 2010-11 school year	Enacted without a specific date
Establish a North Dakota Early Learning Council	Enacted
Provide a factor of .20 for any four-year old attending an approved program for at least two half days per week	Not enacted
Provide $25,000 annually to each of the eight regional education associations and $2.6 million via a factor of .004 for each participating student	Enacted
Adjust the special education multiplier from 4.5 to 4.0 times the state average cost of education for the 1 percent of special education students requiring the greatest expenditures and appropriate $15.5 million	Enacted
Transfer savings from the special education contracts line item to the state aid line item at the conclusion of the 2007-09 biennium and at the conclusion of the 2009-11 biennium	Enacted
Authorize a transfer from the Bank of North Dakota to guarantee funding for special education contracts	Enacted
Authorize four early dismissal days beginning with the 2010-11 school year to provide for two hours of teacher collaboration	Enacted
Increase the number of instructional days from 173 to 174	Enacted
Increase the number of instructional days from 174 to 175 if resources allow	Enacted effective July 1, 2011
Add a third day for professional development activities	Not enacted
Require each school district to adopt a professional development plan and have it reviewed by the Superintendent of Public Instruction and a professional development advisory committee	Enacted
Appropriate $219,032 to the Superintendent of Public Instruction for individuals who will review and propose improvements to the professional development plans, manage instructional coaching grants, and oversee compliance with curricular requirements	Enacted
Provide $2.3 million to the Education Standards and Practices Board for the mentoring of first-year teachers	Enacted
Provide $500,000 for three pilot programs pertaining to model instructional coaching	
Provide transportation funding at 81 cents per mile for large schoolbuses, 42 cents per mile for small school vehicles, and 22 cents per ride for students transported	Enacted at funding rates of 92 cents per mile for large schoolbuses, 42 cents per mile for small school vehicles, and 24 cents per ride for students transported
Increase transportation grants by $5 million	Enacted with a $10 million increase for transportation grants plus an additional $5 million, depending on the forecasted ending fund balance

At the conclusion of the 2009 legislative session, the North Dakota Commission on Education Improvement began its third and final interim effort. The makeup of the commission had been changed statutorily to remove the school district business manager and to add the Director of the Department of Career and Technical Education as a voting member. In addition, the list of nonvoting members, which had included representatives of the North Dakota Council of Educational Leaders, the North Dakota Education Association, and the North Dakota School Boards Association, was expanded with the addition of the president of a private four-year institution of higher education, the owner or manager of a business, and the Commissioner of Higher Education.

The commission's recommendations to the Legislative Assembly in 2011 included the following:

- Replace the .002 technology factor with a .006 data collection factor and provide that the money so raised would be forwarded directly to the Information Technology Department on behalf of individual school districts to assist with the costs of purchasing, installing, and supporting PowerSchool;
- Authorize the Superintendent of Public Instruction to waive the PowerSchool requirement for reservation schools that are required to use a specific program by federal law;
- Require that the state assume the cost of having every 11th grade student take either the ACT, including the writing portion, or WorkKeys;
- Require each school district to report the number of students who took either the ACT or the WorkKeys and explain the circumstances surrounding those students who took neither assessment;
- Clarify that the divisor referenced in Section 15.1-27-11(6)(b) for the purpose of computing

imputed taxable valuation is the district's general fund levy for the taxable year 2008;

- Reduce the volatility in determinations of statewide average imputed taxable valuation per student by disregarding any district having an imputed taxable valuation per student that is greater than three times the statewide average or less than one-fifth of the statewide average;
- Redefine an isolated school district as one that has fewer than 100 students in average daily membership and encompasses an area greater than 275 square miles and provide a weighting factor of .10 for qualifying districts;
- Provide a transition payment for school districts that currently have isolated schools but would not qualify for payment under the newly proposed definition;
- Increase the special education weighting factor from .07 to .073;
- Increase the funding for special education contracts by $500,000;
- Provide that for the 2011-12 school year, the total amount of state aid payable to a district per weighted student unit may not exceed 142 percent of the baseline funding and remove the maximum restriction thereafter;
- Increase the transportation payments by $5 million so that the payment for large schoolbuses increases from $0.92 per mile to $1.03, the payment for small buses increases from $0.44 per mile to $0.46, the rate per student ride increases from $0.24 to $0.26, and the rate for family transportation increases to $0.46 for each mile over two miles, one way; and
- Increase the per student payment by $100 per student for the first year of the biennium and by an additional $100 per student for the second year.

Education Finance - 2011 Legislative Session

As its two predecessors, Senate Bill No. 2150 (2011) incorporated the recommendations put forth by the North Dakota Commission on Education Improvement. With the enactment of Senate Bill No. 2013 (2011), the amount appropriated for the grants - state school aid line item was $918,459,478. In addition, Senate Bill No. 2013 contained $16 million for special education contracts, $48.5 million for transportation, and $304 million in the grants--other grants line item.

Property Tax Relief Legislation

2007 Legislative Session

The Legislative Assembly's role in providing property tax relief began with Senate Bill No. 2032 (2007). As introduced, the bill provided a general fund appropriation of approximately $74 million for property tax relief and provided for allocation of the appropriated amount among school districts. The bill provided adjustments to reduce school district property tax levy authority by the amount of property tax relief to be received by each school district. The bill also established an allocation process based on the number of mills levied by each school district above the threshold of 111 mills.

As enacted, however, Senate Bill No. 2032 was substantially different. The bill addressed income eligibility for the homestead property tax credit, notices for assessment increases, capped the length of time for which voters could authorize unlimited levies, and required that a three-year comparative report be included with real estate and mobile home tax statements. The bill also provided an income tax marriage penalty credit, a homestead income tax credit, and a commercial property income tax credit.

For the 2007-09 biennium, the Legislative Assembly appropriated $3.6 million to the Tax Commissioner for the expansion of the homestead tax credit and $1.1 million for administrative costs related to the legislation's property tax and income tax changes. In addition, the Legislative Assembly transferred $115 million from the permanent oil tax trust fund to the state general fund to offset the anticipated revenue loss resulting from the income tax credits.

The Tax Commissioner encountered various difficulties in administering the income tax credits and ultimately concluded that income taxation is not an appropriate vehicle for the provision of property tax relief.

2009 Legislative Session

Senate Bill No. 2199 (2009) embodied the Governor's conceptualization for providing property tax relief through statewide school district mill levy reductions. At a cost of $295 million for the 2009-11 biennium, Senate Bill No. 2199 reduced school district property tax levies by up to 75 mills and replaced the revenue that the school districts would have lost through direct grants.

The bill also required each school district with an unlimited or excess mill levy to obtain voter approval for their levy's continuation, at a specified number of mills, by 2015, and instituted statutory alternatives in the event that permission was not obtained. In 2010, $295 million was transferred from the permanent oil tax trust fund to the property tax relief sustainability fund for allocations that would occur after the 2009-11 biennium.

2011 Legislative Session

The legislative effort to continue providing property tax relief culminated with the passage of House Bill No. 1047 (2011). Originally recommended by the interim Taxation Committee, House Bill No. 1047 provided $341.7 million to extend the 75 mill school district property tax reduction concept through the 2011-13 biennium. The statutory parameters are similar to the 2009 enactment, except that the grant amount to which a school district is entitled was limited. A current year grant could not exceed the preceding year's grant by more than the percentage increase in statewide taxable valuation. The bill did make provisions for certain types of property that are not subject to traditional property taxes but which nevertheless provide revenue to school districts.

Study

Amid concerns about the overall effectiveness of the mill levy reduction grant program as a mechanism for property tax relief, concerns about its potential to result in the rededication of locally generated revenues to other purposes also deemed meritorious, and general concerns regarding long-term sustainability, the committee sought alternative methods by which school district property tax rates could be effectively lessened while maintaining the integrity of a state education funding system that was designed to address equity and adequacy. The committee realized that, in its initial stages, the stated goal presented formulaic rather than policy challenges and that the most efficient approach would be to allow the Chairman to explore various options and, if any proved to be viable, involve the committee in assessing their desirability. The committee was ultimately presented with five general concepts that had been examined.

- The first concept is based on the provision of adequate funding, using recommendations and definitions from the Picus report. The current weighting system would be maintained and the local contribution would be set at 95 mills. A hold-harmless provision would be instituted and the mill levy reduction grant program would be eliminated.
- The second concept is based on the state assuming 100 percent of the cost of education, with that cost being defined as it was in the Picus report. All unrestricted federal and tuition revenues would be factored in, a hold-harmless provision would be included, and the mill levy reduction grant program would be eliminated. School district taxing authority would be reworked to allow the raising of local revenues only for purposes of non-instructional activities.
- The third concept would eliminate the mill levy reduction grant program and add its appropriation directly to the state education funding formula. A hold-harmless provision also would be included.
- The fourth concept would place a moratorium on mill levy reduction grant increases and provide for a 10-year phase-out period.
- The fifth concept would continue the current state education funding formula and the mill levy reduction grant program at its current level.

The preliminary cost estimates of providing state aid to education using a formula that incorporates the current mill levy reduction grants were presented to the committee using annual figures that ranged from a low of $632 million per year to a high of $918 million per year. The biennial cost estimates ranged from $1.26 billion to $1.83 billion.

The committee was told there are certain general concepts that should be carried forth in any educational funding efforts that the Legislative Assembly undertakes during the 2013 session. These include:

- The provision of funding at a level that ensures the ability of schools to educate students to state standards;
- The continued utilization of both state and local revenue sources to support education;
- The reduction of this state's historical reliance on property taxes as a funding mechanism;
- The provision of sufficient latitude for school district funding of legitimate activities; and
- The provision of an adequate transitional period within which school districts can accommodate any negative impacts to their funding streams.

The committee was also told that it would be preferable to maintain utilization of the existing funding formula, to increase the current property tax reduction efforts by an additional 60 mills, and to limit the school district mill levy authority to 60 mills. This would serve to effectively reduce the standard 185 mill school district general fund levy by 67.5 percent

Conclusion

The committee makes no recommendation regarding the education funding formula.

MISCELLANEOUS REPORTS

The committee received statutorily required reports from the Superintendent of Public Instruction 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, Indian education issues and the development of criteria for grants to low-performing schools, the failure of any school board to meet the statutory threshold for increasing teacher compensation, and the provisions of services to students in grades 6 through 8 who are enrolled in an alternative education program. The committee also received a statutorily required report from the Statewide Longitudinal Data System Committee and a report from representatives of the Grand Forks, Minot, Grand Forks Air Base, and Minot Air Base school districts regarding the state's participation in the Compact on Educational Opportunity for Military Children.

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 (NDCC) 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 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.

Pursuant to Section 54-06-31, the Legislative Management assigned the committee the responsibility to receive periodic reports from the Office of Management and Budget (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 2011 S.L., ch. 41, § 10, the Legislative Management assigned the committee the responsibility to receive a report from OMB on the status and implementation and administration of the compensation philosophy statement and compensation system initiatives included in 2011 House Bill No. 1031.

Committee members were Senators Dick Dever (Chairman), Ray Holmberg, Ralph L. Kilzer, Karen K. Krebsbach, Carolyn C. Nelson, and Ronald Sorvaag and Representatives Randy Boehning, Roger Brabandt, Bette Grande, Ron Guggisberg, Scott Louser, Ralph Metcalf, and John D. Wall.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 2012, 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 in evaluating proposals that affected the public employees health insurance program. The TFFR Board of Trustees also used the actuarial services of the Segal 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 63rd 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 Teachers' Fund for Retirement became effective July 1, 1971. The Teachers' Fund for Retirement is administered by a Board of Trustees. A separate State Investment Board is responsible for the investment of the trust assets, although the TFFR Board establishes the asset allocation policy. 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.

All certified teachers of a public school in the state participate 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.

All active members contribute 9.75 percent of salary per year. The employer may "pick up" the member's contributions under the provisions of Internal Revenue Code Section 414(h). The member contribution rate was increased from 7.75 to 9.75 percent effective July 1, 2012, and is scheduled to increase to 11.75 percent effective July 1, 2014. The total addition of 4 percent to the member contribution rate will remain in effect until TFFR is 90 percent funded on an actuarial basis. At that point, the member contribution rate will revert to 7.75 percent. 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, effective July 1, 2010, the employer contribution rate became 8.75 percent, effective July 1, 2012, the employer contribution rate became 10.75 percent, and effective July 1, 2014, the employer contribution rate will become 12.75 percent. However, the contribution rate will revert to 7.75 percent once the funded ratio reaches 90 percent, measured using the actuarial value of assets. The contribution rate will not automatically increase if the funded ratio later falls below 90 percent. Employees receive credit for service while a member. 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 rejoins TFFR after June 30, 2008, that member is in Tier 2. As of June 30, 2013, Tier 1 members who are at least age 55 and vested--three years of service--as of the effective date, or the sum of the member's age and service is at least 65, are considered grandfathered, and previous plan provisions will not change. Tier 1 members who do not fit these criteria as of June 30, 2013, are considered nongrandfathered. These members, along with Tier 2 members, will have new plan provisions.

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. Effective June 30, 2013, Tier 1 members who are at least age 55 and vested--three years of service--as of the effective date, or if the sum of the member's age and service is at least 65, are eligible for normal service retirement benefits, are grandfathered. Those who do to meet these criteria as of June 30, 2013, nongrandfathered, members may retire upon normal retirement on or after age 65 with credit for three years of service, or if earlier, when the sum of the member's age is at least 90, with a minimum age of 60. A Tier 2 member may retire upon normal retirement on or after 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. Effective July 1, 2013, Tier 2 members may retire upon normal retirement on or after age 65 with credit for five years of service, or if earlier, when the sum of the member's age and service is at least 90, with a minimum age of 60.

The monthly retirement benefit is 2 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 percent of final average compensation times years of service, multiplied by a factor that reduces the benefit 6 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. Effective July 1, 2013, for members who are either nongrandfathered Tier 1 or Tier 2, the monthly benefit is 2 percent of final average compensation times years of service multiplied by a factor that reduces the benefit 8 percent for each year from the earlier of age 65 or the age at which current service plus age equals 90 with a minimum age of 60.

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 percent of final average compensation times years of service with a minimum 20 years' service. Effective July 1, 2013, the disability retirement benefit is 2 percent of final average compensation times 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 other than level income and partial lump sum option also are permitted in the case of disability retirement. For basis recovery only, 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 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 grandfathered Tier 1 members or 90 with a minimum age of 60 for nongrandfathered Tier 1 and Tier 2 members. Reduced benefits may commence at or after age 55 if the member is not eligible for an unreduced benefit. 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, 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 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 prior to 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 after July 31, 2003. Retirees who elected this option before August 1, 2003, were 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 then can 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 has been amended to grant certain postretirement benefit increases. However, TFFR has no automatic cost-of-living increase features.

The latest available report of the consulting actuary was dated July 1, 2012. 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 financial condition. In addition, the report provides information required by TFFR in connection with GASB Statement No. 25, and the report provides various summaries of the data. Valuations are prepared annually, as of July 1 of each year, the first day of TFFR's plan and fiscal year.

The member and employer contribution rates are established by statute. The rates are intended to be sufficient to pay TFFR's normal cost and to amortize TFFR's unfunded actuarial accrued 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.

In order to determine the adequacy of the 10.75 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 amortizing 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, 2012, the annual required contribution is 13.02 percent, compared to 13.16 percent on July 1, 2011. This is greater than the 10.75 percent currently required by law. The shortfall or negative margin between the rate mandated by law, and the rate necessary to fund the unfunded actuarial accrued liability in 30 years is 2.27 percent. The funded ratio--the ratio of the actuarial value of assets to the actuarial accrued liability--decreased from last year. The funded ratio on July 1, 2011, was 66.30 percent, while it was 60.90 percent as of July 1, 2012. Based on market values rather than actuarial values of assets, the funded ratio decreased to 57.6 percent, compared to 62.80 percent last year.

The plan had a net asset loss of $94 million from previous years which has not yet been recognized in the actuarial value of assets because of the five-year smoothing method. This unrecognized asset loss is due to large market losses during fiscal years 2009 and 2012. As the unrecognized loss is recognized over the next four 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 percent in the future. However, the scheduled increases in the employer and member contribution rates are projected to improve the funded status and reduce the annual required contribution.

The Teachers' Fund for Retirement is required to report in its Comprehensive Annual Financial Report for the current fiscal year ending June 30, 2012, that actual contributions received in fiscal year 2012 were less than the annual required contribution. The fiscal year 2012 8.75 percent statutory rate was 66.50 percent of the 13.16 percent annual required contribution determined by the last valuation. Next year, the Comprehensive Annual Financial Report for fiscal year 2013 will show that the 10.75 percent statutory rate is only 82.60 percent of the 13.02 percent annual required contribution. There are no other accounting consequences for the state or the other school districts that sponsor TFFR, since it is a cost-sharing, multiple-employer retirement system.

The actuarial valuation reflects the benefit and contribution provisions set forth in the North Dakota Century Code. 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 actuarial assumptions and methods comply with parameters for disclosure in GASB Statement No. 25. The actuarial consultant reported it believes the assumptions, as approved by the board, are reasonably related to the experience of the plan.

The actuarial consultant identified several significant issues in the valuation year. The employer statutory contribution rate for the fiscal year beginning July 1, 2012, under the North Dakota Century Code is equal to 10.75 percent of payroll for employers. Compared to the annual required contribution of 13.02 percent of payroll, the contribution deficiency is 2.27 percent of payroll as of July 1, 2012. Each year there is a contribution deficiency leads to an increased deficiency in all future years.

The 2011 legislative changes included increases to the statutory contribution rates, 2 percent each for employers and members effective July 1, 2012, and an additional 2 percent each for employers and members effective July 1, 2014. When including the additional total 4 percent increase in employer contributions, effective July 1, 2014, there will no longer be a contribution deficiency.

The funding ratio based on the actuarial value of assets over the actuarial accrued liability as of July 1, 2012, is 60.90 percent, compared to 66.30 percent as of July 1, 2011. This ratio is a measure of funding status, its history is a measure of funding progress, and is the ratio required to be reported under GASB Statement No. 25. The total 8 percent increase in the statutory contribution rates is expected to improve the funding ratio of the plan over time.

For the year ending June 30, 2012, the consulting actuary determined the asset return on a market value basis was -1.40 percent. Also, after gradual recognition of investment gains and losses under the actuarial smoothing method, the actuarial rate of return was also -1.40 percent. This represents an experience loss when compared to the assumed rate of 8 percent. As of June 30, 2012, the actuarial value of assets, $1.748 billion, represented 105.7 percent of the market value, $1.654 billion.

The portion of deferred investment gains and losses recognized during the calculation of the July 1, 2012, actuarial value of assets contributed to loss of $169,448,005. Conversely, the demographic and liability experience resulted in a $9,785,010 gain.

The total investment loss not yet recognized as of June 30, 2012, is $93,931,112. This unrecognized loss will be recognized in the determination of the actuarial value of assets for funding purposes for the next several years, to the extent they are not offset by recognition of gains derived from future experience. This means that earning the assumed rate of investment return of 8 percent per year, net of investment expenses, on a market value basis will result in investment losses on the actuarial value of assets in the next few years.

The current method used to determine the actuarial value of assets yields an amount that is 105.7 percent of the market value of assets as of June 30, 2012.

Guidelines in Actuarial Standard of Practice No. 44 selection and use of asset valuation methods for pension valuations recommend that asset values fall within a reasonable range around the corresponding market value. The actuarial asset method complies with these guidelines.

The actuarial valuation report as of June 30, 2012, is based on financial data as of that date. Changes in the value of assets subsequent to that date are not reflected. Declines in asset values will increase the cost of the plan while increases in asset values, in excess of expected asset values, will decrease the cost of the plan.

The fund's cashflow--contributions minus benefit payments, refunds, and expenses--as a percentage of the market value of assets is -3.10 percent as of June 30, 2012, compared to -2.70 percent as of June 30, 2011. The scheduled increases in the employer and member contribution rates will improve the cashflow percentage, assuming all other experience emerges as expected.

As of July 1, 2012, the fund had 10,014 active members, 1,483 inactive vested members, 468 inactive nonvested members, and 7,151 retirees and beneficiaries. The ratio of actives to retirees and beneficiaries was 1.40 percent. The average age of active members was 43.7 years, and active members have 13.7 average years of service. Average compensation for active members was $50,458.

As of June 30, 2012, 6,568 retirees and 583 beneficiaries were receiving total monthly benefits of $11,902,594. As of June 30, 2012, the average monthly benefit among 6,568 retirees and 583 beneficiaries was $1,664.

The assets at market value were $1,654,149.65 with an actuarial value of $1,748,080,771. The actual rate of return was -1.42 percent. The statutory employer contribution rate is 10.75 percent. The calculated contribution rate is 13.02 percent, thus the available margin is -2.27 percent (10.75% - 13.02% = -2.27%). The available margin on July 1, 2011, was -4.41 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. 43

Sponsor: Representative Scott Louser

Proposal: Under current law, the increase in employer and member contribution rates is being phased-in from July 1, 2008, through July 1, 2014. Employer and member rates revert to 7.75 percent on July 1 following the first valuation showing the funded ratio, as measured by the ratio of the actuarial value of assets to the actuarial accrued liability, equals or exceeds 90 percent. The bill increases the trigger funded ratio for contribution reversion from 90 percent to 100 percent.

Actuarial Analysis: The consulting actuary reported that, the bill will not have an actuarial impact on the TFFR liability immediately. However, it will increase the funded status of the plan starting in 2041 by deferring the contribution reversion to 7.75 percent from 2040 until 2046. The bill would have minimal impact of administrative costs for TFFR.

Committee Report: Favorable recommendation.

Bill No. 99

Sponsor: Board of Trustees

Proposal: Clarifies the definition of "actuarial equivalent" is based on actuarial assumptions and methods adopted by the Board of Trustees; adds a definition of "normal retirement age" to the plan by reference to statutory sections describing eligibility rules for unreduced retirement benefits and clarifies that members have a vested right to retirement benefits upon obtaining normal retirement age; updates federal compliance provisions for the plan regarding Internal Revenue Code §§ 401(a)(17), 401(a)(9), and 415(b) and (d) and various sections of the NDCC Chapter 15-39.1; clarifies Tier 1 members become vested after earning three years of service and Tier 2 members become vested after earning five years of service, without regard to whether assessments were paid to TFFR; adds a savings clause to the plan provisions whereby the Board of Trustees, with approval of the Employee Benefits Programs Committee, may adopt appropriate terminology as necessary for the plan to comply with applicable federal statutes and rules.

Actuarial Analysis: The consulting actuary reported the bill would have an immaterial actuarial cost impact on the TFFR.

Committee Report: Favorable 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 North Dakota 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 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 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 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 percent for each month before age 65 or the age at which the Rule of 85 is met. 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 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 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 percent of the member's final average salary at disability minus workers' compensation benefits 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 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 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 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 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 percent; member contributions from July 1, 1981, through June 30, 1986, accumulate with interest at 6 percent; and member contributions after June 30, 1986, accumulate with interest at .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 percent payable to an eligible survivor. Optional forms of payment are life annuity for judges, a 50 percent joint and survivor annuity with "pop-up" for members of the main, National Guard, and law enforcement systems; a 100 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 an actuarially equivalent graduated benefit option with either a 1 or 2 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 5 percent, and the employer contribution is 5.12 percent. The employee contribution for the judges' retirement system is 6 percent, and the employer contribution is 15.52 percent. The contribution rate for a member of the National Guard retirement system is 4 percent, and the employer contribution is 6.50 percent. The contribution rate for a political subdivision member of the law enforcement retirement system with prior main service is 4.50 percent, and the employer contribution is 9.31 percent. The contribution rate for a Bureau of Criminal Investigation member of the law enforcement system with prior main service is 5 percent, and the employer contribution is 9.31 percent. The contribution rate for a political subdivision member of the law enforcement retirement system without prior main service is 4.50 percent, and the employer contribution is 7.43 percent. A part-time employee in the main system contributes 10.12 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 percent of the member's salary, whichever is greater, for months 1 through 12 of service credit; $25 or 2 percent of the member's monthly salary, whichever is greater, for months 13 through 24 of service credit; $25 or 3 percent of the member's monthly salary, whichever is greater, for months 25 through 36 of service credit; and $25 or 4 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 Retirement 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.

The Legislative Assembly in 1989 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 percent of the monthly salaries or wages of participating members, including participating North Dakota 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, 2012. According to that report, the combined market value of net assets of PERS and the Highway Patrolmen's retirement system was $1,785,190,368, a decrease of $26 million compared to $1,810,762,019 a year earlier. This year's combined market value represents a decrease of 1.40 percent from the market value one year earlier. The rate of return on the market value basis for the PERS fund was -.20 percent for the year ended June 30, 2012. The actuarial value of assets is determined by spreading 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 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 which is less than the market value of assets, if the investment return attributable to net interest and dividends is less than the assumed rate of return. 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 $1,675,489,845 as of June 30, 2012. There is approximately $110 million of depreciation that will be recognized in future years. For the 10-year period ending June 30, 2012, the combined investment results yielded earnings of $665,319,700 on an actuarial value basis representing an average annual return of 4.73 percent. For the 2011-12 year, the actuarial rate of return on the combined value of assets was -.15 percent. The consulting actuary reported that the funded ratio for PERS declined from 70.5 percent on July 1, 2011, to 65.1 percent on July 1, 2012, and declined from 73.7 percent on July 1, 2011, to 70.3 percent on July 1, 2012, for the Highway Patrolmen's retirement system.

The Public Employees Retirement System had 21,091 active members on July 1, 2012. Of this total, 20,738 were active members of the main system, 49 were active members of the judges' retirement system, 32 were active members of the National Guard retirement system, 207 were active members of the law enforcement retirement system with prior main service, and 65 were active members of the law enforcement retirement system without prior main service. The total payroll was $800,878,490 and average salary was $37,973. There were 3,624 inactive members as of July 1, 2012, with vested rights to deferred retirement

benefits. The average deferred monthly benefit for this group was $399. There also were 37 members from the main system and 3 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 3,502 inactive members that are due refunds. There were 7,551 pensioners and 752 beneficiaries receiving average monthly benefits of $981 as of July 1, 2012. During the year ended June 30, 2012, 694 members were awarded a pension.

The contribution requirement consists of the normal cost, 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. For the main system, the total statutory contribution rate is 10.12 percent of payroll, 5 percent for the member, and 5.12 percent for the employer as of July 1, 2012. An increase of 2 percent of payroll is scheduled for January 1, 2013, with the member and employer each being responsible for one-half of the increase. Compared to the ultimate statutory employer rate of 6.12 percent, and taking into account the ultimate statutory member rate of 6 percent, the plan has a deficit of 5.62 percent of payroll. This results in an infinite effective amortization period. The contribution net of normal costs and administrative expenses is never projected to exceed interest on the unfunded actuarial accrued liability, and the unfunded actuarial accrued liability is not being amortized. Even if deferred asset appreciation was taken into account on the valuation date, the effective amortization period would still be infinite.

The total statutory contribution rate for the judges' retirement system is 21.52 percent of payroll, 6 percent for the member, and 15.52 percent for the employer as of July 1, 2012. An increase of 2 percent of payroll is scheduled for January 1, 2013, with the member and employer each being responsible for one-half of the increase. Compared to the ultimate statutory employer rate of 16.52 percent, and taking into account the ultimate statutory member rate of 7 percent, the plan has a margin of .69 percent of payroll. This results in an effective amortization period of 15.4 years. If deferred asset appreciation was taken into account on the valuation date, the effective amortization period would be 5.1 years.

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 7.40 percent. Thus, contributions are less than the actuarial contribution requirement by .90 percent of payroll. The contribution rate set by the Retirement Board for the law enforcement with prior main service system plan is 8.81 percent of payroll and 9.31 percent for Bureau of Criminal Investigation employees. The statutory member contribution rate is 5 percent of payroll as of July 1, 2012, for members employed by the Bureau of Criminal Investigation and 4.50 percent of payroll as of July 1, 2012, for all other members in this segment. An increase is scheduled for January 1, 2013. The increase will be 2 percent of payroll for members employed by the Bureau of Criminal Investigation and 1 percent for all other members in this segment with the member and employer each being responsible for one-half of the increase. Compared to the ultimate statutory employer rate of 10.31 percent for the Bureau of Criminal investigation and 9.31 percent for other members, an average rate of 9.53 percent, and taking into account the ultimate member statutory rates, an average rate of 5.23 percent, the consulting actuary reported the plan has a deficit of 0.85 percent. The approved employer contribution rate for the law enforcement without prior main service system is 6.93 percent of payroll. The employer rate is scheduled to increase 0.50 percent of payroll as of January 1, 2013. The statutory member contribution rate is 4.50 percent of payroll as of July 1, 2012. An increase of .50 percent of payroll is scheduled for January 1, 2013. Taking into account the ultimate statutory member rate of 5 percent, the actuarial consultant determined that the plan has a margin of .35 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 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 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 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 percent of the benefit continuing for the life of the surviving spouse, if any. Optional forms of payment are a 100 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 an actuarially equivalent graduated benefit option with either a 1 or 2 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 11.30 percent of monthly salary, and the state contributes 17.70 percent of the monthly salary for each participating member.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement system fund is dated July 1, 2012. According to that report, the Highway Patrolmen's retirement fund had net assets with a market value of $51,243,115. This compares to $52,705,421 as of July 1, 2011. The rate of return on the market value basis for the Highway Patrolmen's retirement system fund was -.20 percent for the year ended June 30, 2012. 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, 2012, was $48,094,209. The actuarial value of assets was $49,479,855 on July 1, 2011. Thus, on an actuarial basis, the rate of return on the Highway Patrolmen's retirement system fund was -.15 percent for the year ended June 30, 2012. Total active membership was 145. The total statutory contribution rate is 29 percent of payroll, 11.30 percent for the member and 17.70 percent for the employer as of July 1, 2012. An increase of 2 percent of payroll is scheduled for January 1, 2013, with the member and employer each being responsible for one-half of the increase. Compared to the ultimate statutory employer rate of 18.70 percent, and taking into account the ultimate statutory member rate of 12.30 percent, the consulting actuary determined the plan has a deficit of 7.63 percent of payroll.

The latest available report of the consulting actuary for the retiree health insurance credit fund is dated July 1, 2012. According to that report, the fund had net assets with a market value of $63,900,953 and an actuarial value of $58,307,298. The rate of return on the market value basis was 2.65 percent for the year ending June 30, 2012. On an actuarial basis, the rate of return was 1.83 percent for that year. Total active membership was 21,462--8,534 males and 12,928 females. The statutory contribution rate is 1.14 percent of payroll. An employer contribution of .90 percent of payroll is required to fund the plan. This results in an actuarial margin of .24 percent of payroll. The consulting actuary reported the funded ratio increased from 49.6 percent on July 1, 2011, to 51.9 percent on July 1, 2012. Members are required to participate in the uniform group insurance program, and the current monthly 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, 2012, the plan had 19 active participants with projected compensation of $1,042,957. There were three inactive employees as of July 1, 2012, with vested rights. There were 133 pensioners and beneficiaries as of July 1, 2012, and 79 pensioners and beneficiaries receiving annuities from the Travelers Plan as of July 1, 2012. Thus, there were 234 plan participants as of July 1, 2012. The scheduled contribution at the end of the year ending June 30, 2012, was zero, and thus the normal cost was zero. The July 1, 2012, actuarial valuation reported the actuarial value of assets at $75,117,973 with a market value of $84,706,540. The actuarial present value of projected benefits is $72,041,989. 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 Retirement Board.

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. 100

Sponsor: PERS Retirement Board

Proposal: Eliminates the Social Security level option as a form of payment for new retirees in the hybrid plan; updates federal compliance provisions of the hybrid plan and Highway Patrolmen's retirement system regarding Internal Revenue Code §§ 401(a)(17), 401(a)(9), 401(a)(31), and 415(b) and (d) and NDCC Sections 39-03.1-11.2 and 54-52-28; establishes a new section in NDCC Chapter 54-52.6 for the defined contribution plan regarding federal compliance provisions under Internal Revenue Code §§ 401(a)(7), 401(a)(17), 401(a)(9), 401(a)(31), and 415(b) and (d); clarifies the normal retirement date in the hybrid plan for National Guard security officers and firefighters, peace officers and correctional officers of a political subdivision, and peace officers in the Bureau of Criminal Investigation to age 55 and three years of employment in such positions, regardless of whether employment in such position immediately precedes retirement; for purposes of payment of a member's account balance at death from the defined contribution plan, clarifies rules for beneficiaries, including how a member may designate a nonspouse beneficiary with spousal consent, treatment

of multiple beneficiaries and deceased beneficiaries and the lack of a designated beneficiary, and that surviving spouses may elect only a periodic payment of the account balance, including retiree health insurance credits, if the spouse is the sole refund beneficiary; permits the Retirement Board to use fees collected from service providers to fund administrative expenses of the deferred compensation program; permits the Retirement Board to pay for third-party vendor administration services of the Flexcomp program from revenue generated by that program; and updates the committee name in PERS and Highway Patrolmen's retirement system statutes.

Actuarial Analysis: The consulting actuary reported the proposal would have no significant actuarial cost impact on the hybrid plan or the Highway Patrolmen's retirement system.

Committee Report: Favorable recommendation.

Bill No. 101

Sponsor: PERS Retirement Board

Proposal: Amends Section 54-52.1-03.4 to modify the uniform group insurance program eligibility rules for temporary employees first employed after December 31, 2013, and limits the amount any temporary employee can be required to contribute toward the cost of coverage. The purpose of this proposed change is to prevent the state from being subjected to employer-shared responsibility penalties with respect to its temporary employees under the federal Affordable Care Act. The bill also amends Section 54-52.1-18 relating to the high-deductible alternative to ensure the state's high-deductible health plan option can be offered to political subdivision employees and clarify political subdivisions are not required to make the same employer contribution to their employees' health savings accounts as the state is required to make to its employees' health savings accounts.

Actuarial Analysis: The consulting actuary reported the proposal would achieve the identified objectives.

Committee Report: No recommendation.

Bill No. 102

Sponsor: PERS Retirement Board

Proposal: Eliminates coverage under the uniform group insurance program for employees who first retire after July 1, 2015, and are not eligible for Medicare upon retirement; expands the permissible types of benefit payments from retiree health insurance credits to include contributions toward hospital and medical benefits and prescription drug coverage under any health insurance program, and expands the permissible benefit types of payments from retiree health insurance credits to include contributions toward dental, vision, and long-term care benefits coverage under the uniform group insurance program.

Actuarial Analysis: The consulting actuary for PERS reported based upon the assumption 100 percent of members would participate in the retiree health benefit credit fund, the required annual contribution would be approximately $9 million, which is approximately 1.09 percent of payroll of all active members in the retiree health insurance credit fund. This represents an increase of approximately .19 percent of payroll over the current actuarial rate of .90 percent. Based upon the current statutory rate of 1.14 percent of covered payroll, current contribution levels would be sufficient to meet the required annual contribution.

The consulting actuary for the uniform group insurance program reported the proposal will eventually eliminate all retirees from the uniform group insurance program. Since these retirees are expected to have higher claims on average than the active employees, removing them from the program will decrease the premium for the remaining population. The consulting actuary estimated the active premium rates currently charged to the uniform group insurance program will decrease by approximately .90 percent, notwithstanding other medical trend factors as a result of all non-Medicare retirees leaving the program. The full effect of the decrease would be approximately $120,000 in reduced premiums for one year based on fiscal year 2013 rates and data. The consulting actuary also noted the fact that non-Medicare retirees are blended with active employees to set premiums in the uniform group insurance program creates a liability that has to be valued under GASB Statement No. 45. Since these non-Medicare retirees are paying a premium rate that is on average lower than their expected health claims, they are receiving an implicit subsidy. Government Accounting Standards Board Statement No. 45 requires the liability associated with this implicit subsidy for current and future retirees be valued and reported as a footnote in the state's financial statements. The proposal will eventually eliminate all of the implicit subsidy liability.

Committee Report: Favorable recommendation.

Bill No. 103

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 (main and judges' only), and defined contribution plan by 1 percent of the member's monthly salary beginning January 2014, plus an additional increase in both employer and member contribution rates of 1 percent of the member's monthly salary beginning 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 contributions would increase by .50 percent annually, instead of 1 percent, over the same time period, and peace officers in the hybrid plan employed by the Bureau of Criminal Investigation, for which only member contributions would increase 1 percent annually over the same period, and National Guard members for which only member contributions would increase .50 percent instead of 1 percent over the same time period, and temporary employees of the hybrid plan and defined contribution plan, for which the member contribution rate would increase by 2 percent annually instead of 1 percent annually over the same period.

Actuarial Analysis: The consulting actuary reported the bill would not have a material actuarial impact on the liabilities of either the hybrid plan or the Highway Patrolmen's retirement system, but would positively affect the current funding levels of both systems.

Committee Report: Favorable recommendation.

ADDITIONAL COMMITTEE RESPONSIBILITIES

The PERS Board reported 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.

The committee was not notified by any firefighters relief association pursuant to Section 18-11-15(5), which requires the committee to be notified by any firefighters relief association that 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			
	Recruitment		Retention		Recruitment		Retention	
Agency	#	$$	#	$$	#	$$	#	$$
Information Technology Department					9	$21,000		
Department of Human Services			9	$20,000	8	9,251		
Bank of North Dakota					1	2,808	14	30,353
Highway Patrol					10	3,500		
Department of Corrections and Rehabilitation					8	7,575		
Department of Transportation	11	$40,575			53	222,122		
Total	11	$40,575	9	$20,000	89	$266,256	17	$39,353

	July 1, 2003, to June 30, 2005				July 1, 2005, to June 30, 2007			
	Recruitment		Retention		Recruitment		Retention	
Agency	#	$$	#	$$	#	$$	#	$$
Information Technology Department	10	$15,550			13	$17,900		
Veterans' Home	1	4,000						
Department of Human Services	47	22,366	4	$10,800	204	64,556	5	$14,089
Job Service North Dakota	1	2,000						
Department of Mineral Resources			20	20,000			43	35,925
Bank of North Dakota	2	2,404	20	41,400	6	8,408	30	66,699
Highway Patrol	5	2,250			6	3,500		
Department of Corrections and Rehabilitation	6	4,225			4	2,125		
Department of Transportation	77	222,778			69	165,519		
Total	149	$275,573	44	$72,200	302	$262,008	78	$116,713

	July 1, 2007, to June 30, 2009				July 1, 2009, to June 30, 2011					
	Recruitment		Retention		Recruitment		Referral		Retention	
Agency	#	$$	#	$$	#	$$	#	$$	#	$$
Information Technology Department	15	$41,500	1	$2,000	5	$7,500				
State Auditor			20	43,500					36	$89,000
Indigent defense	2	3,400	2	4,000					5	8,000
Department of Human Services	382	180,601	10	100,327	209	180,732	43	$9,078	9	67,837
Department of Mineral Resources	2	4,800	124	404,375	3	5,000			135	549,150
Bank of North Dakota	1	2,500	30	123,411	4	8,627			14	56,211
Highway Patrol	1	500			4	2,000	2	500		
Department of Corrections and Rehabilitation	18	6,880			1	1,550				
Department of Transportation	79	298,609	82	181,379	51	132,362			181	757,280
Total	500	$538,790	269	$858,992	277	$337,771	45	$9,578	381	$1,533,593

	July 1, 2011, to June 30, 2012					
	Recruitment		Referral		Retention	
Agency	#	$$	#	$$	#	$$
Information Technology Department	11	$15,000				
State Auditor					7	$15,000
Retirement and Investment Office	1	5,000				
Department of Human Services	46	43,277			10	52,723
Department of Mineral Resources	2	6,700				
Bank of North Dakota	2	5,958			3	13,267
Department of Transportation	26	101,648				
Total	28	$177,583			20	$80,990

Human Resource Management Services officials reported for the 2009-11 biennium, state employee service awards totaled $466,714 or approximately $52 per employee per biennium. The total employer-paid cost of training costs or educational courses, including tuition and fees, was $3,083,111 or approximately $343 per employee per biennium. For employer-paid professional organization membership and service club dues for individuals, the total was $923,521 or approximately $100 per employee per biennium. Human Resource Management Services officials reported the expenditures were well within expected norms.

Pursuant to 2011 S.L., ch. 41, § 10, OMB officials reported periodically on the status of implementation and administration of the compensation philosophy statement and compensation system initiatives included in House Bill No. 1031. The committee learned HRMS and budget staff are working on options and plans for distribution of salary appropriations in the 2013-15 executive budget. Strategic priorities being analyzed include maintaining salary ranges in a competitive position with market, identifying the most significant situations of compression, and developing distribution plans and models based on Hay Group "market policy/performance pay matrix" from the study recommendations.

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

The Energy Development and Transmission Committee was created in 2007 and was made permanent in 2011. Under North Dakota Century Code Section 54-35-18, 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.

The Legislative Management assigned five reports to the committee:

- Under Section 17-07-01, the Energy Policy Commission is to report biennially on recommendations concerning a comprehensive energy policy.
- Under Section 54-17.7-13, the North Dakota Pipeline Authority is required to deliver a written report on its activities each biennium.
- Under Section 17-05-13, the North Dakota Transmission Authority is required to deliver a written report on its activities each biennium.
- Under Section 57-60-02.1, 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 only project in this state at this time is at the Antelope Valley Station near Beulah. Basin Electric Power Cooperative owns the Antelope Valley Station that is part of an energy complex that includes the Great Plains Synfuels Plant and the Freedom Mine.
- As a part of Section 38-22-15, which establishes 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 are sufficient to satisfy the fund's objectives.

House Concurrent Resolution No. 3007 (2011) directed a study of eminent domain laws as they relate to pipeline siting. On November 3, 2011, the Legislative Management assigned this study to the committee. In addition, the Chairman of the Legislative Management requested the study include a review of bonding authority and liability issues for abandoned pipelines.

Committee members were Senators Rich Wardner (Chairman), John M. Andrist, Lonnie J. Laffen, Stanley W. Lyson, Ryan M. Taylor, and John Warner and Representatives Michael D. Brandenburg, Scot Kelsh, Shirley Meyer, Todd Porter, Mike Schatz, and Gary R. Sukut.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

COMPREHENSIVE ENERGY STUDY

Energy Policy Commission

In 2009 the Energy Policy Commission was created by Section 17-07-01. 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 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. In short, the Energy Policy Commission is charged with developing a comprehensive energy policy for the state, and the committee is charged with studying the impact of a comprehensive energy policy for the state.

The committee received the report of the Energy Policy Commission. The report provided recommendations, but did not recommend any bill drafts, because House Bill No. 1218 (2011) clarified that energy policy should be initiated by the legislative branch, not the commission. The commission focused on four topics:

- Infrastructure;
- Workforce;
- Research and development; and
- Federal regulation.

The commission made 19 recommendations, divided among the four topic areas. There were 10 recommendations as to infrastructure:

1. Develop a new formula to provide adequate funding for local government investment in infrastructure for roads, wastewater treatment facilities, water supply facilities, and other infrastructure.
2. Provide oil impact grant funds for regional or local community development and infrastructure planning. (The committee was informed the majority of funding should be used to develop regional plans. It was argued there needs to be strategic plans that include infrastructure needs, and there needs to be a sharing of information as to best practices.)
3. Remove the sunset on the housing incentive fund, expand program funding, and consider

broadening the application to provide an alternate or direct funding source.

4. Provide funding to the Housing Finance Agency for the downpayment assistance and construction loan guarantee programs and provide guarantees to local lenders for incentives to borrowers who have participated in financial counseling programs.
5. Promote the importance of temporary workforce housing.
6. Promote long-term benefits and reduced impacts for providing easements on property for energy infrastructure.
7. Study existing water systems throughout the state and take action to provide expansion of capacity to meet needs.
8. Coordinate with the Corps of Engineers to increase access to Lake Sakakawea for industry and community needs.
9. Maintain a comprehensive long-range forecast for energy production and supply across all sectors and review needed infrastructure to support growth.
10. Monitor the railroad capacity within this state to ensure there is adequate ability to export commodities to market.

As to workforce, there were three recommendations:

1. Increase efforts to educate this state's youth about natural resources by developing a curriculum to encourage interest in energy careers.
2. Encourage and enable the energy industry to collaborate with the North Dakota University System, the Governor's Workforce Development Council, Job Service North Dakota, and other agencies to:
   a. Provide analytical data related to workforce skills and employment to better identify energy industry needs by funding enhancements to Job Service North Dakota systems and data collection processes.
   b. Develop and enhance core curriculum related to high-demand energy industry careers.
   c. Encourage industry interaction with teachers and guidance counselors to grow youth knowledge and interest in energy careers.
   d. Provide greater accessibility to career and technical education programs.
3. Support legislation that recognizes the role distance-learning will play in the future of education and improve access to technology for students using distance-learning programs.

As to research and development, there were three recommendations:

1. Allocate a portion of the resources trust fund and set a target funding level for the renewable research and development program at $3 million to enable planning for the future and to encourage the development of renewable resources.
2. Continue to support existing research and development programs.
3. Coordinate with private industry to identify the steps necessary to create a viable chemical industry related to energy resources. The natural gas in this state could be used for chemicals. The specialty chemical industry is a $14 trillion per year industry, and there is a great potential for development in this area. These efforts may include:
   a. Funding a study to evaluate value-added market opportunities for energy resources.
   b. Increasing funding to oil and gas research programs by $1 million to explore opportunities related to value-added processing of natural gas.

As to the regulatory environment, there were three recommendations, all related to federal regulation:

1. Encourage federal agencies to recognize environmental issues unique to this state and work with these agencies to develop regulations by establishing new venues for state and federal regulatory agencies to collaborate on federal rulemaking. The industry in this state wants to work together with regulators and not litigate.
2. Use the commission to better understand the economic impact of federal regulations, to comment on proposed regulations, and to work with the Congressional Delegation.
3. Recognize the additional burdens new energy developments are placing on state regulatory agencies and provide adequate funding and staffing levels for the State Department of Health, Department of Mineral Resources, Public Service Commission (PSC), and State Water Commission. (The committee was informed agencies in this state need the best-qualified and most-educated to look out for the state. It was argued funding state regulatory agencies is a serious matter because if our state regulatory agencies are not doing well, the federal government may take over the area of regulation.)

As a result of the report of the Energy Policy Commission, the committee considered several bill drafts, described in this report, which were supported by the commission.

Renewable Energy Development Fund and Value-Added Opportunities Study Bill Draft

The committee considered a bill draft to take 5 percent, up to $3 million per biennium, of the amount credited to the resources trust fund and place it in the renewable energy development fund. The resources trust fund historically has been used for water projects. The Energy Policy Commission supported water projects from the resources trust fund, but the forecast is for an excess of $300 million in that fund. The bill draft also provided a general fund appropriation of $300,000 to the Department of Commerce to study value-added market opportunities relating to renewable energy resources.

A main focus of the Energy Policy Commission is research and development. Oil and gas and lignite have permanent funding, and this bill draft would provide for the same permanent funding for renewable energy research and development. Traditionally, the renewable energy development fund has been funded in the amount of $3 million but not permanently. Private dollar match is needed to use the money in the fund. It was argued whenever there is a public and private partnership, there is due diligence because of the matching funds from industry.

Employment Data Appropriation Bill Draft

The committee considered a bill draft to provide a general fund appropriation of $100,000 to Job Service North Dakota for the purpose of upgrading collection and use of employment data to identify transportation employees and other employees who should be included for statistical purposes in oil-related and gas-related employment. The statistics will aid in the distribution of the oil and gas money more accurately to cities and counties. Although this is one-time funding, it was expected in five or more years there will be need for $15,000 to $20,000 for an update.

These statistics are important in allocating impact funding. A transportation company or construction company may or may not be tied to oil and gas. It was argued if one of these transportation and construction employees works in the oil and gas industry, the employee should be included under the mining heading for statistical purposes. There is some subjectivity by Job Service North Dakota in determining whether an employee is oil-related and gas-related. For example, an employee for a construction company that builds well pads would be included within the oil-related and gas-related employment statistics and an employee for a housing construction company for oil and gas employees would not be included.

Oil and Gas Research Fund and Value-Added Opportunities Study Bill Draft

The committee considered a bill draft to provide an additional $1 million per biennium to the oil and gas research fund. The bill draft also provided a general fund appropriation of $300,000 to the Department of Commerce for the purpose of studying value-added market opportunities related to oil and gas. The bill draft contained legislative intent the additional $1 million in the oil and gas research fund be used by the Industrial Commission for opportunities related to value-added processing of oil and gas. The committee amended the bill draft to add $6 million per biennium and provide intent an additional $5 million be used by the Industrial Commission for opportunities related to value-added processing of oil and gas. Committee discussion included the committee had heard from the Energy and Environmental Research Center (EERC) federal funding is disappearing, and the funding produces great dividends. In addition, it was urged the money be used to develop public and private partnerships for research similar to that done at the EERC. The committee was informed governmental match funding for studies makes industry comfortable because the money reflects support by policymakers.

Housing Incentive Fund and Tax Credit Bill Draft

The committee was informed affordable housing is an important issue, and oil and gas development has resulted in increased rents in areas outside oil development areas. The committee received testimony on the housing incentive fund. Contributors to the fund receive tax credits for contributions to the fund.

The committee considered a bill draft to increase the cap on the aggregate amount of tax credits from $15 million to $20 million per biennium and cap the housing incentive fund at $50 million. The bill draft allowed the Housing Finance Agency to enter public and private partnerships and reserve a share of the housing for the private partner's workforce. The bill draft provided more flexibility to the Housing Finance Agency by allowing the collection of administrative fees from project developers, applicants, and grant recipients. In addition, the bill draft changed who may benefit from the fund to a person with low-income or moderate-income instead of a person with an income not more than 50 percent of the area median income. The housing incentive fund is for a "developing community." The term is not defined, but the committee was informed the term means a small, rural community in this state.

As to the use of the fund, the committee was informed any limitation is in the funding, not in the number of projects. The bill draft would result in more companies being involved. One of the challenges of the fund is most of the money comes at the end of the year when people are thinking about taxes.

Committee discussion included there is a concern that by paying off the loan or selling the property, the person can be relieved of the duty to rent to low-income and moderate-income individuals. Committee discussion included concern for allowing a donor to write off a contribution for something the donor is allowed to use. Companies want to use the fund for housing for employees and cannot do this. If the companies could do this, it was argued it would be good for the community.

Committee discussion included there needs to be housing for people working in retail and service jobs.

Carbon Dioxide Reports - Testimony on Carbon Dioxide Capture and Sequestration

The committee received the report from the coal conversion facility that receives a carbon dioxide capture credit for a carbon capture project. The committee was informed two events keep the need for this incentive relevant. One is the ruling by the Washington, D. C., Court of Appeals to uphold the Environmental Protection Agency (EPA) finding that carbon dioxide is an endangerment to public health, thereby ensuring the EPA will push forward with more carbon dioxide regulations on coal-based power plants. The second event is the EPA's proposed new source performance standard for new coal plants.

Basin Electric reported on the Antelope Valley Station carbon dioxide project. The goal of the Antelope Valley carbon dioxide project was to collect carbon dioxide. To do this, Basin Electric needed the technology, an oil company to use the carbon dioxide for oil recovery, environmental approval, a front-end engineering and design study, and financing. The threshold for going forward was whether the project made business sense. The project is on hold because of lack of regulatory certainty as to carbon dioxide. Present economic conditions do not favor oil companies taking the financial risk to put carbon dioxide into recovery efforts in oilfields. The full cost of the project was large, and there was not a revenue stream; however, the process did provide valuable knowledge.

The committee was informed carbon sequestration will be required for a new coal plant, and at present this is not cost-feasible. The EPA greenhouse gas regulations preclude coal from use for power generation by new plants. The committee received testimony on the Plains CO_2 Reduction Partnership and three projects being conducted by the partnership. The committee was informed for the projects to be economical carbon dioxide needs to be priced between $30 to $40 per ton, and oil needs to be at least $100 per barrel. In short, technology needs to be developed to bring the cost down on carbon capture from coal plants; for example, air stripping units using solvents. Presently, it takes approximately 30 percent of the power from the power plant to capture the carbon dioxide.

The committee received testimony on a commercial carbon storage project in Dunn County. The project is focused on the injection side of carbon storage. The project will take emissions from one plant for 30 years. If the federal government regulates carbon dioxide, the project will be at the front end of carbon dioxide management. There will be one to three injection wells and some monitoring wells so the impact is minimal. The project will pay money upfront and has a royalty program that will provide $25 to $50 per acre per year for the landowner on a commercial-level project. The carbon dioxide has the potential to be used for oil recovery because oilfields are near the project.

The committee was informed the state law is generally excellent and addresses all the key elements needed for a good carbon storage law. Under the law, the pore space belongs to the surface owner. It was argued a minor issue that needs to be addressed is the duration of the interest held by a company purchasing the pore space. In carbon dioxide sequestration, the carbon dioxide stays in the ground for thousands of years, but current law says easements may not exceed 99 years. It was argued these laws create some confusion.

North Dakota Pipeline Authority Report - Testimony on Oil and Gas Pipelines

The committee received the report of the North Dakota Pipeline Authority. The committee was informed oil production has blown by past previous projections. There are two challenges--getting oil out of the Williston Basin and moving oil within the Williston Basin. Approximately 61 percent of oil is moved out of the Williston Basin through pipeline, 23 percent shipped by rail, 6 percent trucked to Canadian pipelines, and 10 percent used by the Tesoro Mandan Refinery. The committee was informed the Burlington Northern Santa Fe Railway Company can move 730,000 barrels per day, and the state will not produce enough oil for there to be a rail handling shortage. The committee was informed the cost to move oil by pipeline instead of rail is approximately $2 to $3 per barrel less. Approximately 70 to 75 percent of oil is trucked within the Williston Basin with the remainder moved with pipeline. However, there has been a shift in Mountrail County to pipelines because this is where the first major Bakken activity occurred and pipelines have been built out.

North Dakota Transmission Authority Report - Testimony on Transmission

The committee received the report of the North Dakota Transmission Authority. The committee received testimony on the regional generation outlet study. The goal of the study was to transmit wind energy across the Midwest independent transmission system operator (MISO) footprint. The final report of the regional generation outlet study had three build out options. The study looked at the lines that were common to all three build out options as part of a multivalue project (MVP) task force. The study showed these lines would not harm the system and would take away constraint issues in the MISO footprint. The determination of an MVP line is important because MISO has filed a tariff with the Federal Energy Regulatory Commission as to cost allocation, and cost allocation for an MVP line is across the 14-state area of MISO. An MVP line cost allocation is broken down between transmission owners in the MISO footprint pro rata as to load. Because there is a way to recoup the investment, there is more of a willingness to be involved in these transmission projects.

There is concern with brownouts in the northeast portion of the country, but the recession has removed the impending nature of that concern because of less demand. Urgency may help in the construction of transmission lines; however, the committee was informed it takes time and money to plan and build transmission lines, regardless of urgency. In addition, this state may not need to export as much energy as previously thought because of the demand in western North Dakota.

In addition, the committee received testimony on projects that will affect the movement of power, including the CapX 2020 Fargo-Monticello line. A capacity increase is expected of 600 megawatts to 1,000 megawatts. The CapX 2020 line is a reliability line that helps the Red River Valley if a line goes down due to weather.

Basin Electric builds transmission to meet the member load. Basin Electric is improving existing transmission lines and plans to build new transmission lines to loop around the load growth area in western North Dakota. To increase this capacity, Basin Electric is in the process of obtaining permits to build a 200-mile, 345-kilovolt line from the Antelope Valley Station near

Beulah around the west side of Lake Sakakawea to Tioga. Preparation of the environmental impact statement will require approximately three years, and construction will take another two years. The committee was informed state regulation is not a barrier to building transmission lines within this state.

The committee was informed combining new transmission lines on old towers is not an option because National Reliability Council rules do not allow collocation. These rules provide for the separation of lines in case of an emergency.

ENERGY SECTOR REVIEW

The committee received testimony on each sector of the energy industry in this state in addition to the reports. These sectors include biodiesel, ethanol, biomass, energy efficiency, solar, geothermal, hydrogen, hydroelectric, coal, natural gas, oil, refining, petroleum marketing, wind, and carbon dioxide utilization.

Biodiesel

The committee received testimony on the biodiesel sector. There is only one biodiesel plant, and it is in Velva. There was a plant in York, and a plant at Northwood has been considered. The committee was informed the volatile United States biodiesel blenders credit has made it difficult for smaller plants to stay in business over the past few years. Limited demand for biodiesel from within the state will limit the possibility of any new production plants in this state. The limited use of biodiesel in this state relates to the pricing difference with vegetable oil, and because of this difference, the plant at Velva mostly makes vegetable oil.

Ethanol

The committee received testimony on the ethanol sector. The committee was informed the main challenges to the ethanol industry in this state are geography and the expiration of the 2011 tax credits.

The committee was informed the ethanol industry in North Dakota is the envy of the nation. The blending facilities in this state provide for a quality product. There has been a growth in retail consumption. Twenty-four million gallons of ethanol are consumed in this state, and 400 million gallons of ethanol are produced in this state. Most ethanol that is shipped out of the country goes to Canada and Brazil. The committee was informed this state is a national leader in the establishment of flex-fuel pumps. Blender pumps have increased the use of ethanol. Before blender pumps, the use of ethanol in this state was closer to 1 to 2 percent of the total produced in this state and now is closer to 6 percent.

The production of ethanol produces ethanol, dried distiller grains, and carbon dioxide. Dried distiller grains are used as a feedstock, and most are shipped out of state. Most dried distiller grains go to Canada or the West. If these distiller grains were used within the state, it would be value-added, and it would save money because there would be less drying needed.

The committee was informed there has been discussion about building pipelines to carry ethanol, and the technology exists for ethanol pipelines. However, existing oil pipelines do not have capacity for ethanol, and it may be technically unworkable to use the pipelines. Presently, ethanol is transported by rail or truck.

A renewable standard that requires more cellulosic ethanol will help with using corn for fuel instead of food. Forty percent of all corn produced is being turned into ethanol. North Dakota State University continues to work actively toward finalizing a business plan in developing the first beet-to-ethanol commercial installation. Great River Energy continues development of Dakota Spirit Ag Energy at Spiritwood with the intent of adding cellulosic ethanol production. The committee was informed it is not economically feasible to build a cellulosic ethanol plant from scratch and be competitive. However, adding cellulosic ethanol to an existing corn-based plant is economically feasible.

A 100 percent clone for fuel has been created out of ethanol produced from algae at the EERC. The Department of Defense funded the work on algae. The largest challenge for ethanol from algae in North Dakota is finding a reliable source of algae. There are over 50,000 varieties of naturally occurring algae.

Biomass

The committee received testimony on the biomass sector. The committee was informed the biomass as an energy sector in this state is mostly in the research and development stage. In this state, biomass is used mainly as a bridge between other sources of energy. The committee reviewed major research and development in this state. University researchers continue to research the development of hybridized biomass in pellet form for use in manufacturing processes.

Energy Efficiency

The committee received testimony on the energy efficiency sector. The committee was informed energy efficiency is a high priority especially because the State Building Code now encompasses the 2009 International Energy Conservation Code. The committee was informed of energy efficiency projects. Over 11,000 energy efficiency and renewable energy rebates were given out in this state, resulting in $3.4 million in energy cost-savings. A Department of Commerce program has weatherized almost 3,500 low-income homes. Approximately 164 local government buildings have been retrofitted through the energy efficiency and conservation block grant saving over $1.1 million annually. Energy-saving measures at state facilities will save over $900,000 annually. Over 1,130 ground source heat pump systems have been installed in this state.

Solar, Geothermal, Hydrogen, and Hydroelectric Power

As to the solar, geothermal, hydrogen, and hydroelectric power sector, the committee was informed of the use of these energy sources in this state. The state has invested $2.5 million for a hydrogen project at the EERC which is attracting hydrogen-based business

to this state. The committee was informed of the installation of solar-powered stock pond watering pumps in rural areas. The geothermal laboratory at the University of North Dakota is conducting a geothermal power demonstration project to demonstrate and test the technical and economic feasibility of generating electricity from nonconventional, low-temperature geothermal resources using organic Rankine cycle technology. As for hydroelectricity power, the Garrison Dam has the capacity of producing 583 megawatts.

Coal

The committee received testimony on the coal sector. The committee received testimony on the regulation of coal, research and development relating to coal, and projects relating to coal. This state produces 30 million tons of coal per year--80 percent is used to generate electricity, 13 percent is used for synthetic gas, and 7 percent is used for fertilizer products. North Dakota is the lowest-cost state for energy because of coal. The lignite industry creates 27,000-plus direct and indirect jobs and generates personal income of $910 million annually.

North Dakota lignite is dependent on Lake Sakakawea water and power plants near the source of the lignite. Lignite may not be shipped because of the high water content, the high sulfur content, and the low British thermal units. Coal beneficiation helps with efficiency but does not help with shipping. After coal beneficiation the water content is reduced, but this makes the coal highly reactive.

Coal energy production is down by over 4,000 megawatts because of lower demand due to a warmer winter, cooler summer, and excess hydroelectric power. Coal has been reduced from 84 percent to 59 percent as the source of energy at Basin Electric. Coal makes the best economic sense but is threatened by EPA regulation, so the cooperative has diversified.

The committee received testimony on EPA regulations of coal. It was argued the main problem with EPA regulations is they are made on a one-size-fits-all level. The committee was informed the state may protect itself by filing comments and communicating with the Congressional Delegation and Congress. Congress can have an impact on regulation before it is finalized through colleague letters to the EPA. Congress may pass laws; however, the current environment is of gridlock. It was argued a lawsuit by the state may be the appropriate response because Congress is unable to take action.

The committee was informed if not for the State Department of Health's regulation of coal, the EPA would have control over coal. The state regulates through a primacy agreement with the federal government. This primacy agreement allows for the state to cooperate with the EPA. Recently, the relationship with the EPA has become more acrimonious.

Committee discussion included the State Department of Health has a good culture and regulates with common sense. It was argued regulation by the federal government is not about the environment but is about making coal more expensive so green energy can compete. The committee was informed the EPA is surprised when the department tells the agency it talks to industry and working with industry helps promote a good environment. It was argued the most-impaired environment is when there is a bad economy.

The committee was informed there is a lack of direction as to energy policy at the federal level. It was argued the best people to regulate this state live in this state.

When the EPA gets sued by environmental groups, it was argued the EPA is forced to make settlements that could not get passed through Congress. Committee discussion included lawsuits are an end run on the political process, and the state should fight the EPA when the EPA is forced to make regulations through lawsuits. The Department of Justice regulations allow attorney's fees to nonprofits that successfully force an agency to follow rules. The states are not reimbursed when successful in a lawsuit against the EPA. It was argued making rules through a lawsuit avoids public hearings.

EPA Regulation

The committee received testimony on the State Department of Health's legal challenge to the proposed regional haze program implementation decisions by the EPA. The department contends Congress, through the passage of the Clean Air Act, provided the EPA authority to establish specific standards or rules, but left the decisions of how to implement the federal requirements to the states. The department was involved in two court cases where the EPA has challenged a state decision regarding appropriate nitrous oxide-controlled technology for lignite-fired cyclone boilers in this state. The state has determined selective noncatalytic reduction is the appropriate control technology. The EPA believes the selective catalytic reduction--a more expensive technology and unproven for the treatment of lignite emissions--is the most appropriate technology.

The committee received testimony on regional haze rules. The regional haze program is a visibility program and not a health protection program. The regional haze program requires states to draft compliance plans, including the identification of reasonable progress goals and the installation of best available retrofit technology on plants built between 1962 and 1977. In 2010 North Dakota submitted a compliance plan with best available retrofit technology that would have reduced nitrous oxide by 43 percent and sulfur dioxide by 86 percent. The EPA failed to approve this plan and proposed very stringent nitrous oxide controls on the Leland Olds and Milton R. Young Stations of a reduction of nitrous oxide by 90 percent. The EPA argues selective catalytic reactors will work on lignite and will work better on nitrous oxide. The department argues North Dakota lignite is different, and the technology is not proven to work on cyclone boilers that burn North Dakota lignite without extraordinary reengineering.

Committee discussion included although there has been criticism of the EPA, there has been a decrease in pollutants that would not have occurred except for the

regulation. It was argued companies would not reduce pollutants without regulation. The contrary argument is the coal industry was building plants with scrubbers and reclaiming land before the EPA was created. It was argued because one state's air quality can affect another state's air quality, federal regulation is necessary. However, discussion included the concern is the EPA is overstepping its authority at the present time.

The federal rule on the one-hour sulfur dioxide standards establishes the maximum ambient sulfur dioxide concentration that may occur in air per hour. The department has objected to the method proposed to determine if a given area meets the standard. The EPA has proposed states determine compliance through air quality models.

Modeling is not based upon actual information, and this state has actual information for the last 25 years. Modeling can overpredict, and the EPA uses the maximum levels shown by modeling. It was argued modeling overestimates the amount of sulfur dioxide by up to 25 percent. The committee was informed the industry in North Dakota cannot meet the sulfur dioxide standard if compliance is based on modeling instead of monitoring. North Dakota, along with four other states, has challenged the rule because the modeling requirement is not allowed under the Clean Air Act and results in overprediction.

On March 2, 2012, the EPA announced a final decision that the state's regional haze plan would be approved with respect to all sulfur dioxide and particulate matter controls the state had identified and also would be approved for selective noncatalytic reduction nitrous oxide controls called for in the state plan for the Milton R. Young Station and Basin Electric Leland Olds Station. The EPA disapproved the nitrous oxide control technologies the state had recommended for the Basin Electric Antelope Valley Station and the Great River Energy Coal Creek Station.

The committee was informed MISO is concerned with the reliability of the system in response to the rules on mercury. The MISO reported these mercury standards placed the most coal-fired units at risk for compliance. The response by industry may include the potential retirement of 15,000 megawatts of coal combustion plants because of retrofit costs. It will cost approximately $31 billion to replace the old plants. The committee was informed environmental compliance costs will be passed along to consumers, and these costs may be significant. The MISO estimates environmental retrofit costs will increase customers' bills by 7 percent.

The committee received testimony on carbon dioxide regulation. The state is required by federal law to address greenhouse gas generation in the following manner:

- Major sources of greenhouse gases currently submit their greenhouse gas generation amounts to the EPA on a yearly basis.
- New sources that have the potential to emit 100,000 tons a year or more of greenhouse gases must go through the best available control technology review process.
- Major modifications to sources that have the potential to increase greenhouse gas emissions by 75,000 tons per year or more must also go through the best available control technology review process.

The committee was informed technology for capturing greenhouse gases has not been commercially demonstrated, especially as to lignite coal. The industry is unsure as to what to do with carbon dioxide. It was argued there needs to be a law on long-term liability. The MISO estimates a $50 per ton cost of carbon, if imposed by the federal government, would equate to an approximate 40 percent increase in electric rates.

The committee received testimony on coal combustion residues. Fly ash comprises 56 percent of the coal combustion residues. Fly ash is used in products worldwide, and there is a strong demand for fly ash. Coal combustion residues are managed 40 percent through landfills, 30 percent through beneficial use, 19 percent through surface impoundments, and 11 percent through mine fill. As a result of the Tennessee Valley Authority Kingston Fossil Plant release in 2008 of coal combustion residues due to a dam failure, the EPA has proposed new rules. There are two options for the rules. One option is to regulate coal combustion residues as hazardous waste, and another option is to treat the residues as municipal waste.

Environmental groups and individual citizens favor regulation of fly ash under Subtitle C as hazardous waste and states and industry groups favor regulation under Subtitle D as municipal waste. The estimated cost of Subtitle C regulation is $76 million in capital costs, and this does not include operation and maintenance. Subtitle C regulation will cost $79 billion to $110 billion over 20 years and result in 183,900 to 316,000 job losses in electric power generation, coal mining, food service, real estate establishments, and repair construction of nonresidential structures. There may be gains in hazardous waste management and coal combustion residues handling and equipment manufacturing. The capital cost for Subtitle D regulation is $15.5 million. Subtitle D costs to industry would be $23 billion to $35 billion over 20 years and would result in job losses of 39,000 to 64,700.

Concrete represents 15 percent of the total infrastructure of the United States, and 75 percent of concrete uses fly ash. Fly ash is approximately 15 percent of the makeup of concrete. Hazardous waste may not be sold for beneficial use. If fly ash is regulated as hazardous waste, the result will be a $105 billion increase in costs to build roads over the next 20 years. This cost is a $5.32 billion annual direct cost made up of $2.5 billion in price of materials and $2.73 billion in shorter pavement and service life of concrete.

Committee discussion included the Legislative Assembly should comment on rulemaking.

Coal Combustion Residues Bill Draft

The committee considered a bill draft that would accept the present use and disposal of coal combustion residues. The committee was informed the bill draft

contemplates acceptance of the heavy metal content in fly ash by accepting present regulations that regulate heavy metal content.

Coal Mine Reclamation Regulation

The committee received testimony on the PSC's surface coal mining regulatory program. The committee received testimony with programmatic changes being implemented through the federal Office of Surface Mining (OSM). For example, OSM has begun sending its own inspectors to duplicate the work of state inspectors. It was argued this only serves to increase regulatory confusion. Also, OSM is in the process of developing a new nationwide rule to protect any stream that may be impacted by coal mining. While the primary purpose of the proposed rule relates to mountaintop mining and valley fill issues in Appalachia, the proposed rule will add new regulations for coal mining in this area of the country. In addition, OSM is conducting outreach for proposed rules for the placement of coal ash in mine lands. As envisioned, the placement of coal ash in mine lands would be regulated under OSM rules. If mine placement of coal ash is considered to be disposal, the ash would come under rules that will be adopted by the EPA.

The OSM oversees the commission's administration for the coal regulatory program. The OSM currently funds 64 percent of the commission's coal regulatory program costs, and the remaining 36 percent comes from the state general fund. Federal funding for state coal regulatory programs has been a concern for the past two years. There have been proposals to reduce the federal share by about 15 percent. The OSM has indicated intent to cut federal funding to state programs and to require states to increase their own taxes on coal to fund the federal share of these programs. As an alternative to states increasing industry taxes or fees, OSM is considering a new rule to assess fees on the coal industry that would be returned to the state to cover all or part of the federal share of the regulatory program.

The committee was informed the commission has a good relationship with the federal government on reclamation, and the federal government cannot afford to do what the commission does and cannot do it as well. The OSM has stated North Dakota has an excellent coal regulatory program.

Coal Research and Development

The committee received testimony on the use of state money for research. Research and development programs are funded by a 10-cent per ton severance tax allocation and 5 percent allocation of the coal conversion tax. Each state dollar invested has resulted in $6 of industry match. Currently, the Lignite Research Council is participating in 15 research and development projects worth approximately $170 million. Many of these projects focus on the reduction, capture, and storage of carbon dioxide. The Great River Energy DryFining is a result of Industrial Commission investments through the Lignite Energy Council of $400,000 which resulted in $13.5 million invested by the Department of Energy. These investments resulted in Great River Energy investing $250 million in coal drying. The coal drying has led to the construction of the $370.4 million Spiritwood Energy Power Plant fueled with 610,000 tons of beneficiated lignite from the Falkirk Mine.

The committee received testimony on DryFining. The objective of DryFining is to restore lost performance by removing moisture in the incoming fuel stream. This is done by employing waste heat to reduce moisture content in the lignite. Less moisture lessens exit gas temperature, exit gas volume, exit gas velocity, power for mills, power for fans, and duct erosion and maintenance. The DryFining provides a 25 percent reduction in water released from the process. There is 54 percent less sulfur dioxide, 40 percent less mercury, and 32 percent less nitrous oxide. In addition, there is 4 percent less carbon dioxide and a 4 percent improvement in cycle efficiency. There is a substantial reduction in routine pulverizer, boiler, and scrubber maintenance. The committee was informed DryFining is cost-effective.

Natural Gas

The committee received testimony on the natural gas sector. As to natural gas, the BENTEK study reported as oil production declines in the Bakken, natural gas production will increase. The BENTEK study reported as the oil is removed it creates gaps that are filled in with natural gas. Bakken wells have a strong production of oil and decline quickly. After 10 years, a Bakken well will become a gas well with associated oil.

The committee was informed capacity for gas leaving the state is tight. Competition for space on a pipeline depends on price that is determined on a daily basis.

The committee focused on the liquids in the natural gas stream because Bakken gas is high in liquids at 30 percent. The committee was informed until natural gas is processed at a plant, it is worthless. Although natural gas is at a historically low price, natural gas liquids have a great value. The higher value of natural gas liquids creates an incentive to get natural gas to a processing plant. There is a disparity in the market between oil and natural gas in price, and natural gas liquids tend to follow oil pricing.

The committee received testimony on the challenges resulting from increased natural gas production. All gas drilling in this state is associated with the drilling of oil. Although flaring is increasing, the areas of mature development in this state have reduced from 80 to 20 percent the amount of flared gas. Thirty-one percent of natural gas--225 million cubic feet per day--is flared on a volume basis. Using gas that is being flared may or may not be economical, depending upon many factors. Over half the wells flare less than 1,000 cubic feet (1 MCF) per day. It was argued it will never be economical to do anything with these wells because the well is flaring $3 of gas per day. There is more opportunity with higher levels of gas. There is a window of opportunity for wells that are releasing 300 MCF per day to 1,000 MCF per day. If the well is producing more gas than 1,000 MCF per day, there is an economic incentive for the gas to be piped to a gas plant.

The EERC has been studying bifuel technology in which natural gas in injected into the fuel stream of a petroleum engine. The EERC has achieved 40 percent or greater replacement rates in the study. Drilling rigs run on electric power, and diesel fuel is used to make electricity. The main opportunity is when the drilling rig is on the pad. The opportunity for bifuel technology ends, however, once a gas pipeline gets to a well site. The cost-savings of using natural gas from a Bakken well with bifuel technology is enormous. There is a $3,000 plus per day cost avoidance in diesel use, and the payout is achieved between one and one-half months and three months. A field demonstration was started the middle of 2012. A part of the study is to determine the degree of conditioning that is required to optimize performance. The committee was informed having a chemical processing unit on the well pad does create liability issues.

The committee was informed there are tax issues for using gas at the well site instead of flaring. Statutes provide the operator of a well may flare the gas, tax and royalty free, for one year. This is the best time for onsite use. It was urged the use of gas at the well site may need to be incentivized.

One type of chemical produced from natural gas liquids is fertilizer. The committee was informed value-added activities tend to be near the source of consumption in this country. Fertilizer plants require huge capital, and the cost of gas is as important as many other factors, but these plants are dependent on inexpensive gas. Most projections show natural gas will be below $4 for the next 20 years, but investors are skittish on investing in chemical and fertilizer plants because these plants are very expensive.

The committee was informed there has not been a development in internal markets for petroleum chemicals from liquids in gas in this state because Alberta, Canada, has attractive markets for petroleum chemicals.

Oil

The committee received testimony on the oil sector. As to oil, there has been a 233 percent increase in oil production since 2007. The committee was informed the rig count will flatten or will go down as oil development goes from exploration to development. Companies needed to hold the lease by production in the fields. When the fields are held, the fields are filled in. Oil production is becoming more efficient with three wells on each site, and more wells with fewer rigs lower costs. At present, there is an $11.5 million break-even point for some companies. The committee was informed the average Bakken well generates over $20 million in net profit. The intent is to bring the costs down, and pipelines bring down costs.

Committee discussion included technology improvements will increase the percentage of recoverable oil which is 3 to 5 percent of the oil in the Bakken. The Petroleum Council and the EERC are conducting studies that will increase the amount of recoverable oil.

Oil production on the Three Affiliated Tribes Reservation has grown from virtually zero production in 2007 to nearly 108,000 barrels of oil per day in 2012. In April 2012 there were 616 wells producing oil which represents 20 percent of the state's daily oil production. Even with this high production, the committee was informed there is a day-to-day struggle for the industry in operating on reservations.

A comprehensive description of the impact resulting from increased oil production is included under the **Oil and Gas Development** portion of this report.

Refining

The committee received testimony on the refining sector. There are three refineries being discussed. These refineries are diesel topping facilities. One is being considered near Trenton, one near Dickinson, and one near Makoti. In addition, the Tesoro Mandan Refinery has increased its crude processing capabilities by approximately 20 percent from 60,000 barrels per day to 70,000 barrels per day.

The committee was informed a new refinery would require the gasoline demand of a million people and the availability of a million barrels per day, and this is a possible vision for North Dakota. If the Hyperion Refinery is built in South Dakota, it may remove the economies of scale needed for a full refinery in North Dakota.

The committee received testimony on a special type of refinery near Trenton. There is a shortage of diesel fuel, and to meet the need, the proposed plant will use 20,000 barrels per day and will be a diesel topping plant. One-third of the input will be refined as diesel fuel, and the byproducts include naphtha, which can be used to dilute tar sands oil in Canada.

The diesel may be sold onsite or can be shipped by rail. The refinery will not need a pipeline because it is easy to get crude oil to the site.

A representative of the refinery made the following recommendations for legislative changes:

1. Modify the North Dakota Pipeline Authority bonding authority to include refineries, not just pipelines.
2. Waive the extraction tax if North Dakota crude is sold to a North Dakota refinery.
3. Waive the sales tax for building a refinery.

The North Dakota Pipeline Authority is an agent of last resort and lends the name of the authority to revenue bonds. The state would not have an equity position.

The committee was informed the waiver of the extraction tax would improve cashflow and would stabilize the profitability of the refinery. The first few years of operation is critical for profitability. The refinery has done an evaluation of return on equity using different scenarios, and the project is viable even in the worst-case scenario.

North Dakota Pipeline Authority
Refineries Bonding Bill Draft

The committee considered a bill draft to allow the North Dakota Pipeline Authority to issue evidences of indebtedness for refineries. The bill draft clarifies what

was thought to be true, there was intent to include refineries when the law was enacted.

Oil Extraction Tax Exemption for Refineries Bill Draft

The committee considered a bill draft on exempting oil from the oil extraction tax if the oil is sold to and refined by a refinery located in this state. A 60,000-barrel per day refinery purchasing $60 per barrel oil would have a savings of $234,000 per day. It was argued the bill draft would lower the cost of oil purchased by these refineries. Lost tax revenue would be offset by economic development as a result of a viable refinery and products produced from refined oil. Another benefit is consumers in this state pay 73 cents per gallon for shipping oil to the Gulf Coast and shipping gasoline back. This would be saved by refining in this state. There was concern with how the tax exemption would be administered. Committee discussion included the bill draft may need language to require a discount in price to the refinery for the reduction in taxes to the producer and royalty owners. Some committee members urged an expiration date so the incentive would not last beyond when it is beneficial.

Petroleum Marketing

The committee received testimony on the petroleum marketing sector. In 2011 retail petroleum dealers sold about 750 million gallons of taxable gasoline as well as close to 1 billion gallons of taxable diesel fuel. Taxable sales of diesel have increased 30 to 40 percent in the last five years. An oil rig uses approximately 2,500 gallons to 3,000 gallons of diesel fuel per day. Even with this increase there is an adequate supply of diesel. However, the gasoline supply is tight. This is due to the Chicago basis price going up and gasoline in Minneapolis going east instead of going west. Nationally, use of gasoline is on the decline or flat, but use of diesel has increased. The committee was informed there is the potential for growth in petroleum marketing in western North Dakota, but there is not a workforce or housing for the workforce.

Wind

The committee received testimony on the wind sector. Wind is in a very young stage of development, and development has slowed. Although 2,900 megawatts of wind power are permitted, only 1,400 megawatts are produced each year. The recession has caused some of the slowing of development because demand has softened. In addition, renewable portfolio standards in states have been met so there is no growth in that area. Production tax credits expire at the end of the year. It is unknown as to whether the credits will be renewed, and this creates uncertainty and less development. The committee was informed wind turbines are getting larger, more efficient, and more reliable.

There is a formula in state law for fees paid by a wind farm project developer to the PSC. These fees are based upon the value of a project with a maximum amount, and if too much money is paid in fees, the money is returned to the project developer.

The committee was informed 700 megawatts of wind have been integrated into the Basin Electric system in the last 10 years along with a 700-megawatt natural gas system as a backup to provide a firm power supply. Basin Electric finished a wind farm project this spring and is finished with wind projects at the current time.

Carbon Dioxide Utilization

The committee received testimony on carbon dioxide utilization. Carbon dioxide is used in enhanced oil recovery by pushing oil and repressurizing the oilfield. Because some carbon dioxide is trapped, enhanced oil recovery is a technique of sequestration. There has not been a lot of work on whether carbon dioxide can be used for enhanced oil recovery in shale. The committee received testimony on the EERC's carbon dioxide enhanced Bakken recovery research program. A waterflood will not work in the Bakken Formation for secondary recovery because it pushes oil into the rock. Two tests have been done, with marginally effective results using carbon dioxide. The committee was informed that needs to be a viable implementation approach, and conventional carbon dioxide method cannot be used.

OIL AND GAS DEVELOPMENT

The committee received testimony on oil and gas development. It is estimated the number of rigs will fluctuate between 100 rigs and 250 rigs per year. It is estimated 33,000 new wells will be drilled in the Bakken and Three Forks Formations. The drilling activity now supports 35,000 jobs. The number of jobs required will increase to over 60,000 in 2020 and decrease to approximately 45,000 from 2035 to 2060. The multiplier for other jobs created by these jobs is 2.5.

The risks involved with oil development include cap and trade proposals, tax rule changes, oil price below $50 a barrel, EPA regulation of hydraulic fracturing, and federal minor source air permits requiring 6 months to 12 months for approval.

The committee was informed to expect 225 rigs for the next two years. At the end of two years, the homesteading phase where oil companies prove up their leases should be completed. In particular, 80 percent of the leases will be secured by the end of 2012. After the homestead phase comes the farming stage in which the field is filled in from the old pad. After 2014 there will need to be 650 semiloads to 700 semiloads per rig. Presently, rigs require approximately 2,000 semiloads.

The play is expanding south of Interstate 94 and to the Canadian border. Wells are at idle because there is a 120-day wait for a frac job which is the largest constraint on production. Even though there is a wait for frac jobs, it does not result in drilling slowing down because it is better to drill than to lose a lease. Most leases need to be secured within 2.5 years to 4 years, and the cost of a lost lease is around $2 million.

The committee was informed stripper well status will be reached after 13 years to 14 years for a typical Bakken well under current law, and the Legislative Assembly will need to review taxes on stripper wells.

Oil and Gas Development Impact

The committee received testimony on the impact of oil and gas development, and what is being done or should be done to address it. The committee received testimony on impact to schools; cities, including Williston; counties, including Williams; townships; water providers, including private and the Western Area Water Supply Authority; utility providers; emergency medical services (EMS) providers; day care providers; appraisers; financial institutions; housing; the PSC; the Department of Transportation; and the workforce.

The committee was informed roads, housing, crime, and safety are the biggest issues. The rig count has stabilized, and production will grow. As the play moves from exploration to development, the types of services needed will change, and there will be much less traffic. Summer 2012 might have been the busiest in terms of activity in the Bakken. Pipelines are critical for there to be less road traffic, and pipelines need to be built early in the oilfield development for pipelines to be economical. There are approximately 2,000 trucks per well, and this number is reduced to 600 to 800 trucks if there is a pipeline system in place. It was argued the major county roads need to be able to take a 105,500-pound load. State and county road limits cost the oil industry because the limits close down roads for three months. It was urged the state should help identify and fund major roads.

The committee was informed Bakken counties are different from other growth areas of the state. First, the counties are unique because there is only one Bakken, a world-class resource. The Bakken creates an opportunity for the state to build core infrastructure. Second, the pace of growth is faster than elsewhere in the state. Infrastructure cannot keep pace with the growth. Third, 30 percent of the traffic in western North Dakota is trucks. Traffic elsewhere is not this high of a percentage or number of trucks. Finally, the industry will adjust to the conditions. If the state does not help cities and counties grow, the oil development will more than likely become like North Slope in Alaska, in which the industry brings in workers and temporary housing.

Schools

The committee received testimony on the impact of oil and gas production on schools. Birthrates have multiplied by over four times, and there are many more students. For example, District No. 8 is projecting an increase of 200 students for kindergarten through grade 8. District No. 8 had approximately 300 students in 2011. The district has purchased modulars to house the 300 new students. There are students from 37 states and four foreign countries in the Stanley School District. There are 180 new students projected for 2012 in Stanley.

The areas of need include:

1. Buildings, because of lack of space.
2. Staff, including teachers and bus drivers. Bus drivers are not paid as much as oilfield drivers, who are paid $300 a day, do not receive retention pay for completing the school year, and only work about four hours a day. A change in the law providing reciprocity to out-of-state teachers was helpful for hiring Minnesota teachers. To hire teachers, there needs to be day care available for teachers, and some school districts are considering providing day care available in schools. It is difficult to find substitute teachers in North Dakota because teachers need a four-year teaching degree. It was argued a substitute teacher does not need a four-year teaching degree to substitute teach for two days. However, long-term substitutes do need to be properly trained.
3. Rapid growth grants.
4. A gross production pool for schools.
5. Mechanical assistance, because some bus companies do not want to sell buses in oil country due to the amount of work that needs to be done under warranty. Buses are lasting only two years to three years because of the mechanical problems due to rough roads.
6. Assistance for students in special situations or with special needs. Homeless children may go to a school without regard to residence, and homeless is defined as without a four-season dwelling, which does not include portable trailers.
7. Equipment, including desks, computers, and books.
8. Teacher housing. The Williston School District owns two 4-unit apartment buildings that were financed by the rent. Committee discussion included the school district should not be in the housing business. It was argued it is the purpose of the local housing authority to create housing and rent to key public employees at low rates. It was argued the housing authority is the proper avenue to use to issue bonds, build, and rent to teachers. The committee was informed there is no land the local housing authority can afford to acquire.

It was argued schools need an aid program for facilities immediately because it is not fair for local taxpayers to bear the full expense for oil development. It was argued schools also need an increase in the share of the production tax.

The committee noted foundation aid comes in the following year. When there is rapid growth, the school district is a year behind. It was argued there needs to be money in the front end. The committee was informed it would be acceptable to receive payments for students and, if the students did not stay, to pay back the state. At least the school district would know it would have the funding for teachers ahead of hiring the teachers.

The committee was informed one solution is to have a commission to deal with emergencies. A commission, similar to Wyoming's, would prioritize based upon severe impact of an industry that generates taxes for the state. It was argued a commission is needed because otherwise it takes years to react through the legislative process. The commission would review proposals and grant money similar to how the federal government grants military impact aid. It was argued oil impact is similar to federal aid due to military impact. The money

could be set aside for schools statewide. It was argued the commission should be reviewable so it can be terminated if not needed, and there would need to be safeguards and oversight for the commission.

Committee discussion included the Air Force bases do not pay property tax and was the justification for federal impact aid. Discussion included additional dollars in one part of the state may affect equity, and there may be a lawsuit. The committee was informed many of the students come from campers, and camper owners do not pay property taxes.

Cities

The committee received testimony on the impact of oil and gas production on cities. The impacts include:

- The need for retail.
- A burden on governmental and health service facilities.
- The need for planning for permanent construction and development regulation.
- An increase in costs of government. The cost of operating the city of Williston is increasing, and salaries for the 2011-12 fiscal year have increased $2.5 million to $3 million. The city had to give 10 percent increases in wages, hire more people, and provide housing allowances.
- A shortage of housing. There is a shortage of income-based housing in Williston, and it would be beneficial to the residents of Williston. However, every income level is short on housing in Williston.

The committee was informed property tax has not kept abreast of costs. The value of property has increased dramatically in Williston, but property taxes should increase only by a reasonable percentage. It was argued it is unfair to increase property taxes dramatically on long-term residents.

Counties

The committee received testimony on the impact of oil and gas development on counties, in particular, Williams County. The main issues were affordable housing, zoning and planning, workload and workforce, and law enforcement.

The committee was informed housing for road construction crews is an issue. Williams County is investigating reserving places in crew camps for construction workers. It was argued there needs to be a mechanism for continued maintenance, and a state fund was suggested.

The committee was informed there is no affordable housing. People want to buy homes but want homes under $250,000 which are not available.

The committee received testimony on zoning in Williams County. Developers from around the country are in Williams County because of the difficult economic conditions in the rest of the country. There are some undesirable developers that try to intimidate small local government. Williams County imposed a moratorium on temporary housing because 9,777 beds had been approved between 2010 and 2012 but only approximately 6,000 built. The committee was informed there is not enough water for temporary housing, and sewage systems are at capacity. Williams County would welcome aid from the state in the form of a state planning office.

Williams County would appreciate help from the state, including help in enforcing zoning laws. The state's attorney's office is overwhelmed with enforcing code violations. People are living in tents, abandoned farmsteads, shops, and garages. Many of these places do not have 911 addresses and are unsafe.

Williams County is experiencing competition for employees, especially for social service employees. Because the state is providing social service employees an additional $500 allowance, it is difficult for Williams County to compete with the state.

The committee was informed crime has increased. The main traffic complaint by counties is overweight vehicles. The state must retain fines in the state school fund, but fees may go elsewhere. The committee was informed because overweight charges go to the state, there is no incentive for local officials to enforce overweight violations. Overweight fees go through district court--a state entity--and would have to be paid out through the State Treasurer back to counties if counties were to retain the fees.

The Williams County Sheriff's workload has greatly increased, and the Sheriff must prioritize the work done by his deputies. It is difficult to retain deputies, and it was reported three deputies quit in one week. There is very little time to work on motor vehicle registration violations even though it appears many out-of-state vehicles are not registered in this state. The Sheriff considered having a station on the highway to check registration, but the traffic problems that would be created would not be worth the trouble. Generally, registration laws are enforced if a person is stopped for another offense for which there is a reasonable or articulable suspicion.

Committee discussion included there may be a technological solution to the failure of nonresidents to register motor vehicles. For example, radio signals are used for toll roads in California.

Townships

The committee received testimony on the impact of oil and gas development on townships. The main impact on townships is to the township roads. The cost for gravel has increased over three times. The gravel is thrown from the road by fast-moving trucks to a degree that traffic control signs get covered with mud. The committee received testimony from one township that received $40,000 for gravel from the impact fund. The township has 34 miles of road and can gravel 1.5 miles with $40,000.

The committee was informed most oil companies will work with a township, but when putting in the oil well, the oil company knows it will destroy the road and does not want to put any money into the road until after the well is in. The committee was informed weather does not stop oil well drilling, and safe road conditions are not an issue because oil companies are in the business of getting oil and not making roads. The goal is to get the well in as

soon as possible. Township representatives recommended townships be included in the statute for impact funding.

Committee discussion included the eastern part of the state has similar problems because of water and agribusiness.

Independent Water Providers

The Western Area Water Supply Authority has determined the project will need approximately $80 million in funding in the next biennium to meet the water demands of the region. Of this $80 million, approximately $60 million is estimated to complete the expanded original project, an increase from the $40 million estimated in 2010. An additional $20 million is needed to build initial rural expansion to meet part of the large increase in rural demands. The price of $20 per 1,000 gallons is the same charged to a commercial user whether from a depot or from the line.

Independent Water Providers include 100 individuals supplying frac water to the oil industry. Independent Water Providers provide 70 percent of the water needed to the oil industry. The Independent Water Providers expressed concerns about the Western Area Water Supply Authority. They argued for oversight by the State Water Commission, and against the authority heating water for frac jobs in direct competition with the Independent Water Providers.

Utility Providers

The committee received testimony on residential and commercial gas and electric use in Williston. The committee received testimony on activities of Basin Electric to meet the growing need for electricity in the Williston Basin area from a generation and a high-voltage transmission line perspective. Basin Electric has forecasted an increased load in the Williston Basin area of 1,000 megawatts by 2025--equal to the capacity of either the Coal Creek Station or the Antelope Valley Station. Basin Electric has been adding generation through coal plants, natural gas peaking plants, intermediate natural gas plants, and power transfers into the area. Basin Electric will be able to provide more power in the future through transmission and will be able to back off on peaking plants in the future. Growth in the Williston Basin area has come faster than expected, and there is not enough time to build a coal-fired plant to meet the demand. The least cost alternative to a coal plant is a natural gas plant that can be built fast with less regulation.

The committee was informed environmental impact studies are required under the Environmental Protection Act and require about three years to complete. Part of the problem is there are not enough federal employees to do the work. Another part of the problem is federal agencies are fearful of lawsuits by environmental groups if there is any mistake in the process.

Emergency Medical Services Providers

The committee received testimony on the impact of oil and gas development on EMS. There are three major EMS issues--personnel, education, and funding. Volunteer emergency service providers are burning out. Labor for EMS is provided by volunteers, and the volunteer, pool is dwindling. Other problems for emergency service providers include vehicles not pulling over for sirens, people not knowing where they live, and people not paying for services. The top priority is for sustainable funding for personnel, and it was argued impact funding is not a steady stream of funding.

Committee discussion included the Energy Infrastructure and Impact Office should be allowed to provide impact funding for staffing. It was argued funding through the Department of Transportation budget for EMS staffing may be more appropriate.

Day Care Providers

The committee was informed day care is critical to the workforce. The committee was informed there needs to be an additional 4,655 day care spots to meet 50 percent of the need. Making a day care profitable is difficult, and it is difficult to employ staff. The committee was informed there has been communication with the industry, and if there were a plan for day care, there would be industry support.

Appraisers

The committee was informed closed records create an issue for appraisers. This issue was created by a recent change in the law. Another change allows for reciprocity with other states, but the appraisers need to see enough transactions to be able to sign an appraisal. It takes three years to five years of understudy to become an appraiser. Committee discussion included there are few new appraisers because the understudy becomes the competition.

Financial Institutions

The committee was informed by a Williston bank there are opportunities for banks in construction of homes, apartments, and commercial property. Loans are difficult to give because housing prices are very high, appraisals are difficult, and finding a purchaser in the secondary market is difficult. The committee was informed many people come to the oilfield with a troubled credit history. It is risky to loan to these people, and credit repair takes time.

Housing

The committee was informed Williston needs more low-cost and moderate-cost housing for teachers, police, and municipal employees. The population of the state is expected to grow 25.2 percent from 2010 to 2025. The population for the same time period in the Williston area is expected to increase 60 percent. The housing demand in this state for the same time period will increase 30 percent, compared to 59 percent in the Williston area. Fifty-five percent of the total household growth will be low-income, 75 percent if moderate-incomes are added.

Impact on Public Service Commission

The committee received testimony on the impact of the oil and gas development on the PSC. Since the

recent energy boom began, the PSC has completed cases involving $5.5 billion in investments in this state. There are an additional $13 billion in proposed projects that are in various stages of permitting. The committee was informed this state's siting Act is a sound one, and project developers' siting fees are available to the PSC to process cases and to hire outside consultants and experts.

Impact on Department of Transportation

The committee received testimony on the impact of oil and gas development on the Department of Transportation. The committee received testimony on road projects in oil-producing counties. A temporary bypass is being constructed northwest of Williston. The department will mill out and replace Highway 2. Highway 22 will be more stable than the two previous repairs, because the project will move the hill instead of go around it. An undivided four-lane will be built between Williston and Watford City. An undivided four-lane has a 16-foot lane in the middle that acts as a continuous left turn lane. The department will finish the super two between Watford City and Alexander and super two can be turned into four lanes. Whether there will be a four-lane or a super two is determined by traffic. The committee was informed the first priority in Dickinson is the bypass, and the second priority is the underpass.

The committee was informed about the repair of the Long X Bridge that was damaged by a truck. The bridge was in good shape before the recent accident. The department chose to repair instead of rebuild because a new bridge would take at least two years to design and build. The truck operator that damaged the bridge will pay for the repair which is expected to cost $500,000, and most semitrucks have that much liability coverage.

The committee received testimony on costs. Inflation has been averaging approximately 11 percent per year since 2001.

The committee received testimony on workload. The committee was informed the amount of consulting used by the department has increased from approximately 25 to 60 percent. The department can consult out work but still needs to monitor and manage the consultants.

The committee was informed the state fuel tax is up considerably due to the oil and gas industry. In addition, motor vehicle registrations are increasing, including temporary registrations.

Workforce

The committee received testimony on TrainND in the northwest portion of the state. TrainND is divided into four regions, and training is provided based on the businesses provided in each region. The whole program trains 14,000 people in all regions. The Williston area has trained 12,000 people in the last year.

The challenges facing the program include lack of space. The committee was informed generally industry will pay for training but not a building. The committee was informed the next area of instruction will be in maintenance. The training that will be needed in the future is a higher level of training, including training in electronics, electricity, and instrumentation. In addition, there is a high demand for a commercial driver's license program.

Impact Grant Process

The committee received testimony on the energy infrastructure and impact grant program. In 2011 the Legislative Assembly authorized $100 million and $35 million was added during the November special session for the grant program. The Board of University and School Lands may not disburse more than 60 percent of the funds in a fiscal year. There are four grant rounds. The first round was for city infrastructure for hub cities and all other cities. The second round was for township roads and transportation. The third round was for emergency services and responders. The fourth round was for all other political subdivision infrastructure, including parks, counties, and airports. The grants are provided to meet initial impacts affecting basic government services directly necessitated by oil and gas development. The grants are given as reimbursements. Reimbursement requires invoices or minutes showing approval for payment. The documentation is required so there is accountability.

The process for grant review starts with the staff taking applications and reviewing the applications, including visiting with applicants. The grant program is based on the application and need. The committee was informed generally large cities do better with the application process because large cities have more staff, and the application process can be frustrating for townships and small cities. Staff scores the applications based on criteria, and the applicants are ranked based on the scores. The Impact Grants Advisory Committee reviews the applications based on score. The advisory committee makes recommendations to the Board of University and School Lands. The board has made few changes to the advisory committee recommendations. The board chooses the members of the advisory committee.

The Department of Trust Lands focuses on getting the money out as fast as possible, and the department starts the process before money is received.

It was argued if the $100 million cap were removed, the money would be spent wisely--a better review could be done with more resources. It takes 13 months or 14 months to reach the cap in the biennium.

The committee was informed when the state announced there was oil impact funding of $100 million, contractors started to take advantage. It was argued there need to be checks and balances to avoid this kind of abuse.

The committee was informed although schools have access to impact funds, schools are not eligible until the fourth round. The $5 million provided for rapid enrollment removed schools from the first three rounds. It was recommended the infrastructure grant program be expanded for schools and hospitals. The committee was informed housing requests were denied categorically in the early rounds.

Impact Funding Methods

It was urged the state needs to fund $800 million to $1 billion per year for five years for oil development impact in western North Dakota. In addition, it was urged there should be impact funding like coal impact funding for schools. The committee was informed 28 to 29 percent of the coal taxes were returned to political subdivisions. It was argued if this is done for oil, it would work well. It was argued the state should remove the oil impact grant program because political subdivisions cannot plan on grants.

Pace of Impact

Planning for the future is difficult because any study is out of date as soon as it is done. It was argued providing a legislative response every two years is not soon enough and change needs to be made every six months, and more support should already have been provided.

One suggestion to lessen impact was to slow down the permitting of wells. Committee discussion included it would be difficult to slow the process because oil companies have leases for three years and any intentional slowing of permit issuance could be considered a taking of property. In response, it was argued there are two ways to slow the process--stop infill drilling or declare a state of emergency and extend the leases. The committee was informed the oil industry would like a slower pace because of the fast pace results in an astronomical cost of doing business.

Recommendations

The committee recommends Senate Bill No. 2027 to take 5 percent, up to $3 million per biennium, of the amount credited to the resources trust fund and place it in the renewable energy development fund. The bill provides for a general fund appropriation of $300,000 for a study for value-added market opportunities for renewable energy resources.

The committee recommends Senate Bill No. 2028 to provide a general fund appropriation of $100,000 to Job Service North Dakota for the purposes of upgrading the collection and use of employment data to identify transportation employees and other employees who should be included in oil-related and gas-related employment.

The committee recommends Senate Bill No. 2029 to provide an additional $6 million per biennium to the oil and gas research fund with intent that $5 million be used by the Industrial Commission for opportunities related to value-added processing of oil and gas. The bill provides a general fund appropriation of $300,000 for a study of value-added market opportunities related to oil and gas.

The committee recommends House Bill No. 1029 to increase the cap on the aggregate amount of tax credits for housing incentive fund contributions from $15 million to $20 million per biennium and cap the fund at $50 million. The bill allows the Housing Finance Agency to enter public and private partnerships and reserve a share of the housing for the private partner's workforce and to charge administration fees to project developers, applicants, or grant recipients.

The committee recommends House Bill No. 1030 to accept the present use and disposal of coal combustion residues.

The committee recommends House Bill No. 1031 to allow the North Dakota Pipeline Authority to issue evidences of indebtedness for refineries.

The committee recommends House Bill No. 1032 to provide an exemption from the oil extraction tax if the oil is sold to and refined by a refinery located in this state.

EMINENT DOMAIN AND PIPELINE SITING STUDY

House Concurrent Resolution No. 3007 (2011) directed the study of eminent domain laws as they relate to pipeline siting. The resolution focuses on the following concerns:

- Multistate pipelines may not provide a direct benefit to this state.
- Eminent domain may be used against a property owner without the property owner's consent and places a burden on the property owner to defend the action which includes legal fees and costs.
- Eminent domain may be used to take property without consideration for the surrounding property and future uses of the property.

The Chairman of the Legislative Management requested the study include a review of bonding authority and liability issues for abandoned pipelines.

The legislative history reveals the impetus for the study came from the siting of the Keystone pipeline. A landowner had concerns with the negotiation procedures used by the pipeline company. The company wanted to place the pipeline 150 feet from the landowner's house and wanted the landowner to agree. The landowner wanted at least the 500-foot setback required by the siting law and was able to negotiate a 1,500-foot setback. Even though eminent domain proceedings were not used, the landowner was concerned eminent domain is used as a threat, and private landowners do not have any leverage with a pipeline company. The landowner also was concerned the pipeline siting process was not easy to access by the landowner.

Eminent Domain

Eminent domain has four main elements--private property, taking, public use, and just compensation. Article I, Section 16, of the Constitution of North Dakota, relates to eminent domain:

> **Private property shall not be taken or damaged for public use without just compensation** having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. **Compensation shall be**

ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

For purposes of this section, **a public use or a public purpose does not include public benefits of economic development**, including an increase in tax base, tax revenues, employment, or general economic health. **Private property shall not be taken for the use of**, or ownership by, **any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.** (emphasis supplied)

The statutory eminent domain law is contained in Chapter 32-15. Under Section 32-15-05, before property can be taken it must appear the taking is necessary for an authorized use. Under Section 49-19-12, a common pipeline carrier has the right and the power of eminent domain necessary for the construction, maintenance, or authorization of its pipeline. To have the power of eminent domain, a common pipeline carrier must accept regulation by the PSC, including the agreement to carry without discrimination and to rate regulations.

Under the constitution and statutory provisions, in short, landowners have the following rights relating to eminent domain:

1. To negotiate for condemnation.
2. To receive a copy of the appraisal or written statement and summary showing the basis of the offer.
3. To request and receive a list of neighboring property owners to whom offers have been made.
4. To ask a judge to decide whether the property the condemnor wants to take is necessary for the proposed use.
5. To have a judge or jury decide the amount of just compensation.
6. To appeal a court decision regarding public use, necessity, or just compensation and to ask for attorney's fees and costs.

Pipeline Siting

Although eminent domain and siting are fairly mutually exclusive concepts, a pipeline company must be a common carrier to be entitled to eminent domain. Not only does the pipeline company have to be a common carrier, under Section 49-22-07 a utility may not construct a pipeline or exercise the right of eminent domain without first obtaining a corridor and route permit from the PSC.

Under Section 49-22-09, the PSC must consider these factors when evaluating the corridor and route:

1. The effect of the facility on public health and welfare, natural resources, and the environment.
2. The effects of transmission technologies and systems designed to minimize adverse environmental effects.
3. Adverse direct and indirect environmental effects that cannot be avoided.
4. Alternatives that minimize adverse impact.
5. Irreversible and irretrievable commitments of natural resources.
6. The direct and indirect economic impacts of the proposed facility.
7. Existing plans for other developments in the vicinity of the route.
8. The effect of the proposed route on scenic areas, historic sites and structures, and paleontological and archaeological sites.
9. The effects of the route which are unique because of biological wealth or because of rare and endangered species.
10. Other problems raised by governmental entities.

Consumer Protection Provisions

One of the expressed concerns with the present system for obtaining an agreement with a landowner is the lack of consumer protection provisions. Under Section 49-22-16.1, a person employed by a public utility may not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of land to grant an easement. If at least five landowners are aggrieved, the landowners may bring an action in district court to find these listed practices have happened. If the court so finds, the court is to order the easements void and the compensation returned, that the landowner retain the compensation, or receive up to three times the compensation. The landowner is entitled to costs and reasonable attorney's fees if the court finds in the landowner's favor. If the court finds the utility knowingly allowed, encouraged, or participated in the bad acts, the court shall send the opinion to the Public Service Commission. The commission may refuse to issue, revoke, or suspend the permit.

By way of comparison, in 2009 consumer protection provisions for wind easements and wind energy leases were adopted and were codified as Section 17-04-06. 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 minimal 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 carry general liability insurance and allowing the wind energy facility to add the property owner as an additional insured.

In addition, this section 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.

Abandoned Pipelines

Common carrier pipelines are regulated as to decommissioning under the siting jurisdiction of the PSC. Gathering pipelines are not regulated by the commission. As such, there are no requirements for bonding or filing the location of gathering pipelines at the state level. This may create an issue with an excavator who follows one-call procedures and is excavating and finds an abandoned pipeline.

Under Section 49-23-04, the excavator may not presume the underground facility is abandoned unless the facility has been verified as abandoned by reference to installation records or by testing. A notification center is required to establish a method of providing personnel from a facility owner to inspect whether the pipeline is abandoned or inactive. In short, an inactive facility must be considered active.

In an effort to address the location of gathering pipelines, 2011 House Bill No. 1382 would have required the operator of a gas-gathering pipeline to provide a map of the location of pipeline within 90 days of completion of construction to the state one-call center. Although this concept was amended out of the bill, there was committee discussion and testimony relating to the topic. Testimony indicated because the abandoned lines are difficult to find, ground-penetrating radar across the entire corridor may be done which is extremely expensive. It was argued it would be acceptable to ask companies to provide the location of existing abandoned infrastructure; however, it was countered, the cost to relocate the lines, some of which have been in place since the 1950s, would be prohibitive. These lines are internally documented with engineering firms that work for oilfield companies; however, the information is not provided to a central agency. One of the proposed amendments would have placed a duty on the excavator to notify the operator or, if unknown, the one-call notification center, with the discovery of a previously unidentified underground facility.

Testimony and Discussion

The committee received information on the routing process for common carrier pipelines. The committee was informed there is a sense of helplessness from the citizens and confusion relating to the PSC's role in pipeline siting.

The PSC has hearings on the siting jurisdiction in the communities affected. This provides public access to the process but is not as inviting as it could be because of formalities in the hearing. It was argued the main issue with landowners appears to be an issue of public understanding and knowledge, not rights. The committee was informed it is extremely rare for a pipeline route to be taken by eminent domain.

The committee received testimony from landowners on issues with eminent domain and pipeline siting. As to eminent domain, the committee was informed a reason government was formed was to protect private property rights, and the use of eminent domain by common carriers does not represent what most people would think of as a valid use of eminent domain. As to pipeline siting, the committee was informed landowners lack information and notice and adequate access to dispute resolution mechanisms. Landowners and those representing landowners recommended changes in the law related to eminent domain and pipeline siting. They argued:

1. Landowners deserve adequate warning of a pending pipeline route so they can prepare to explain concerns before the PSC. The committee was informed the PSC hearings come quickly. It was argued 90 days' notice before the meeting with the information on the proposed route would be beneficial for landowners.
2. The PSC and Attorney General should be required to prepare and publish a guide for landowners and require the guide to be sent to landowners in advance of negotiation. This would give landowners information on landowners' rights, eminent domain, and negotiation options. Committee discussion included a landowner should be provided information so the landowner knows the landowner's rights.
3. Landowners deserve an adequate venue to appeal or negotiate terms of easements. The committee was informed the PSC hearings do not provide an adequate procedure for the landowner to express concerns. It was argued there should be language allowing the PSC jurisdiction to hear from aggrieved landowners. In addition, the committee was informed routing is not determined by the PSC before the easement options are obtained so the hearing is too late. It was argued landowners need a government entity with which to air concerns and to receive information. It was argued a state

mediator that would listen to both sides and make recommendations would be useful.

4. The Legislative Assembly should clarify the meaning of the constitutional provisions in statute so a common carrier is defined so as to not include a pipeline with no on-ramp or off-ramp in this state. Presently, a pipeline that travels through North Dakota without any on-ramp or off-ramp can be a common carrier upon application to the PSC.
5. The PSC should not be allowed to issue a route permit, which is necessary for eminent domain, if there are actions protesting the practices used to obtain easements.

The committee was informed a person who is naive as to business matters would find it very difficult to negotiate with a pipeline company. For instance, most landowners are not aware of avoidance areas that can be contracted away in the negotiation process without knowing it. The committee was informed bullying and threats are common in negotiation for pipeline right of way. Committee discussion included it is a terrible business practice to threaten landowners before working with landowners.

The committee was informed even if the landowner has satisfactory resolution with the eminent domain proceeding, the landowner has burdens throughout the proceeding. A landowner must pay the costs up to that point before there is reimbursement, including legal costs. The committee was informed it is sometimes difficult to find an attorney because pipeline companies retain the experienced attorneys and no experienced attorney is available for landowners.

In short, the committee was informed the core problem is pipeline companies threaten landowners with eminent domain when the company does not have the right to eminent domain. Because there is not much incentive for a pipeline company to negotiate because of the power of eminent domain, it was argued the solution is for the Legislative Assembly to level the playing field by providing an incentive to pipeline companies to negotiate. Committee discussion included sometimes pipelines are more important than the landowner's rights, but landowner's rights must be given due consideration. It was argued eminent domain should be available only as a last resort after working with the landowner. To the contrary, it was argued a landowner should not be able to hold up an entire pipeline project.

The committee received testimony on gas-gathering pipelines that are not regulated by the PSC. However, there are Department of Mineral Resources' rules relating to gathering pipelines. Gathering pipelines are treated as an appurtenance to the oil well. When the oil well is abandoned, the pipeline must be purged with water or nitrogen and if the gathering pipeline is shallower than three feet, then the pipeline must be removed. These rules have been in place since 2005.

Gathering pipelines are covered under the well bond. Before the bond on the well is released, the gathering pipeline must be removed or purged. Most bonds on a well are for $50,000 or a $100,000 blanket bond. Blanket bonds are only available if there are fewer than six compliance issues. The bond stays in place until the field inspector certifies the site as reclaimed. If a well sits for a year, the bond may be used to clean up the site.

The committee was informed usually the bond does not cover the full cost of reclamation, but the lower level of bonding is allowed once a company begins production and has assets in this state. The most recent reclamation costs were $85,000. In addition to the bond, fines and fees go to the abandoned well restoration fund, which has a balance of $1.5 million.

There is no risk to a surface owner for liability if everyone follows the rules. An operator must file with the county recorder the location of the cuttings pit and reclaimed site. If an operator does not follow the law and does not record the abandoned well and pit, the owner may be required to haul off the pit and plug the well if the owner wants to develop the land. The owner would have a cause of action against the operator.

The committee received testimony on the concern for future generations being able to locate buried and abandoned facilities. The issue is not solely about compensation but is about the impact on future generations as well. There was a concern with liability for buried pipelines that release hydrocarbons in the future after the company that placed the lines has gone bankrupt, or there have been multiple sales of the company. The committee was informed there are problems with pipelines that were buried during the last oil boom which are not locatable.

The committee was informed repository of gas-gathering pipelines in the commission would not be a burden. In the past there has been resistance to provide the location of these gas-gathering pipelines due to competitive issues, but this reluctance has been relaxing--partly because the perpetrators have become the victims as new companies accidently find old pipelines. It was argued the location of these lines in a repository would be beneficial to local emergency management. Although companies have the information on the location of gathering pipelines presently being placed in the ground, and share with local emergency management as requested, a repository would be centralized and permanent. It was argued gathering pipelines are not part of the statute requiring recordation of the location and should be part of the statute. It was argued a solution is to have a repository for the location of gathering pipelines. It was argued the office of the county recorder appears to be the best spot for the location of these records. The committee was informed recording the location of gas-gathering pipelines at the county courthouse may not be practical because of the lack of staff. It was argued now is a good time to locate and map gathering pipelines.

In addition to the concern of not recording the location, there was a concern gathering pipelines are installed differently by different companies. It was argued the width and depth of the easement for gas-gathering pipelines need to be consistent. A landowner told of having five pipelines on one quarter section, and every pipeline was different as to spacing and depth.

The committee was informed it took long negotiations to have some consistency.

The committee received testimony on the one-call system and gas-gathering pipelines. The one-call system is a private system and the location of gathering lines is not reported to the one-call system, but the one-call system contacts pipeline companies to locate gathering lines upon a locate request. The committee was informed the One Call Board has not taken any action as to locating old gas-gathering pipelines. One reason is there is a lot of poly line, and it is not locatable. In addition, there is no system of recording the line when it is hit.

Conclusion

The committee does not make any recommendation regarding the study of eminent domain and pipeline siting.

GOVERNMENT SERVICES COMMITTEE

The Government Services Committee was assigned the following responsibilities:

- A study of the use of state-owned airplanes pursuant to Section 13 of 2011 House Bill No. 1012. The study was to include a review of airplanes owned by state agencies, the justification for owning each airplane, the frequency of use of each airplane, and the feasibility and desirability of requiring state-owned airplanes to be managed by Fleet Services. The study was amended by the Legislative Management to exclude state-owned airplanes operated by the University of North Dakota (UND) School of Aviation.
- A study of options for relocating the Highway Patrol training academy pursuant to Section 5 of 2011 House Bill No. 1011. The study was to include a review of options for relocating the training academy, options for relocating the emergency operations vehicle training course, and options for constructing a Highway Patrol shooting range.
- 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.

The Chairman of the Legislative Management also assigned the committee the following budget-related duties:

1. Monitor the status of state revenues and expenditures for the 2011-13 biennium.
2. Receive input from major state agencies regarding the status of their budgets and changes in federal funds.
3. Receive information from state agencies regarding estimated cost-to-continue items for the 2013-15 biennium.
4. Receive the July 2012 revised 2011-13 biennium and the preliminary 2013-15 biennium general fund revenue forecasts.
5. Review projected revenues, expenditures, and fund balances of major state funds.
6. Identify and prioritize potential one-time funding items for the 2013-15 biennium.
7. Discuss possible legislative initiatives affecting the budget, including initiatives to return excess revenues to taxpayers.
8. Identify key budget issues for the 2013 legislative session.
9. Determine, in consultation with the Office of Management and Budget (OMB), a sustainable level of spending for the 2013-15 biennium.
10. As appropriate, make recommendations to the Legislative Management.

Committee members were Representatives Jeff Delzer (Chairman), Duane DeKrey, Glen Froseth, Ed Gruchalla, Matthew M. Klein, Curtiss Kreun, Bob Martinson, Lisa Meier, Phillip Mueller, Todd Porter, David S. Rust, Vicky Steiner, Blair Thoreson, Don Vigesaa, and Alon Wieland and Senators Ron Carlisle, Lonnie J. Laffen, Gary A. Lee, David O'Connell, Jim Roers, and Donald Schaible.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

STUDY OF THE USE OF STATE-OWNED AIRPLANES

The Government Services Committee was assigned a study of the use of state-owned airplanes pursuant to Section 13 of 2011 House Bill No. 1012. The study was to include a review of airplanes owned by state agencies, the justification for owning each airplane, the frequency of use of each airplane, and the feasibility and desirability of requiring state-owned airplanes to be managed by Fleet Services. The study was amended by the Legislative Management to exclude state-owned airplanes operated by the UND School of Aviation.

Fleet Services

Section 24-02-03.3 requires the Department of Transportation to operate a central vehicle management system (Fleet Services) to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state. Each state agency that utilizes a vehicle from Fleet Services pays a fee to Fleet Services for the cost of the vehicle, including operating costs. The fee is based on the estimated costs of acquiring and maintaining the vehicle. Fleet Services currently manages approximately 3,200 vehicles.

Previous Studies

The 1981-82 Legislative Audit and Fiscal Review Committee studied the utilization of aircraft by state agencies and the feasibility of establishing a state aircraft pool. The committee adopted a resolution that recommended the establishment of a state aircraft pool. However, the resolution was not approved by the Legislative Assembly in 1983.

State-Owned Airplanes

Excluding the North Dakota University System, five state agencies own a total of eight airplanes. The table below details the ownership of airplanes by state agencies, including the purpose of ownership:

Agency	Aircraft	Purpose
Department of Transportation	1998 Beechcraft-Raytheon King Air	Passenger transportation
Department of Transportation	1977 Piper Cheyenne	Passenger transportation
Department of Transportation	1975 Cessna Skymaster	Engineering photography
North Dakota Aeronautics Commission	2008 Cessna 206	Airport inspections and construction

Agency	Aircraft	Purpose
Game and Fish Department	2006 American Champion Scout	Wildlife surveys
Game and Fish Department	2006 Cessna 182	Enforcement
Highway Patrol	2007 Cessna 206	Enforcement
Attorney General	1965 Beechcraft Baron	Enforcement

The University of North Dakota owns 72 aircraft and the UND Aerospace Foundation owns an additional 56 aircraft which are used primarily for flight training purposes and occasionally for passenger transportation. North Dakota State University (NDSU) does not own any aircraft but leases a King Air B200 airplane from the NDSU Development Foundation for passenger transportation purposes.

Department of Transportation Airplanes

The committee received information regarding the three airplanes operated by the Department of Transportation. The committee learned the department has four permanent employees to provide air service which includes three pilots and a maintenance manager. The department also has a temporary employee to provide aircraft scheduling services and several temporary part-time pilots available as needed. The following schedule provides information regarding aircraft owned by the department:

Aircraft	Purchase Price	Passenger Capacity	Flight Hours		
			2008	2009	2010
1975 Cessna Skymaster	$99,283	One pilot, one passenger (also contains photography equipment)	142	191	403
1977 Piper Cheyenne	$438,433	Two pilots, five passengers	190	110	133
1998 Beechcraft-Raytheon King Air	$3,901,377	Two pilots, seven passengers	288	216	242

The committee learned the department provides air transportation service to several state agencies, including the Governor's office. The department charges other agencies a fee for providing air transportation services. The fees are used to recover costs relating to the operation of the aircraft. The committee received the following schedule detailing the current rates charged to other agencies for air service:

Aircraft	Rate Per Hour
1975 Cessna Skymaster	$413
1977 Piper Cheyenne	$923
1998 Beechcraft-Raytheon King Air	$995

The committee received information regarding the number of Department of Transportation flights during state fiscal year 2011, including the number of passengers on the flights and passenger fees collected. The following schedule summarizes passenger flights utilizing the department's passenger airplanes:

Flight Information - State Fiscal Year 2011 (July 1, 2010 - June 30, 2011)		
	1998 King Air B200	1977 Piper Cheyenne
Number of trips	191	57
Flight hours	276.4	86.7
Total passengers	753	155
Total fees collected	$374,191	$111,523
Average fees collected per passenger	$496.93	$719.51

Highway Patrol Airplane

The committee learned the Highway Patrol owns a 2007 Cessna 206 which is primarily used for search and rescue operations, assisting in criminal apprehension, traffic-related duties, and AMBER Alert functions. The plane was purchased for $429,000 with approximately $35,000 of the funding provided from state sources and $394,000 provided from federal asset forfeiture funds. The airplane is equipped with forward looking infrared (FLIR) equipment to assist in search missions.

The following schedule details the flight hours of the airplane for state fiscal years 2009 through 2011:

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011
Flight hours	236	143	156

The committee learned the Highway Patrol pilots are also ground troopers. The troopers that serve as pilots do not receive any additional pay related to their pilot duties.

Game and Fish Department Airplanes

The committee received information regarding airplanes owned by the Game and Fish Department. The department owns a 2006 American Champion Scout which is used for research purposes, such as big game surveys. The department purchased the airplane for $181,186. The department also owns a 2006 Cessna 182 which was purchased for $375,000 and is used for law enforcement purposes and search and rescue missions.

The following schedule provides information regarding the flight hours of each department airplane for state fiscal years 2009 through 2011:

Game and Fish Department Airplane Flight Hours			
	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011
2006 American Champion Scout	437.5	418.6	533.5
2006 Cessna 182	192.3	219.6	216.3

The committee learned the department has a pilot who also performs airplane maintenance duties on Game and Fish Department airplanes.

North Dakota Aeronautics Commission Airplane

The committee received information regarding the airplane owned by the North Dakota Aeronautics Commission. The commission purchased a 2008 Cessna 206 airplane for $560,000 in September 2011. The airplane is used primarily for

airport safety inspections and passenger transportation and is estimated to be used 200 flight hours per year.

The committee learned the current airplane owned by the commission was purchased to replace a 1980 Cessna Skymaster. The 1980 Cessna Skymaster was purchased in 1987 for $83,500 and was sold in 2011 for $109,600.

Attorney General's Office Airplane

The committee received information regarding the airplane owned by the Attorney General's office. The office owns a 1965 Beechcraft Baron airplane which has two engines and can transport four passengers. The airplane is used for transporting evidence, transporting law enforcement agents and emergency personnel, surveillance, and for other various purposes. The plane has been used for a total of 125 hours during the past three years.

The committee learned the Attorney General's office obtained the 1965 Beechcraft Baron airplane at no cost through a federal Department of Defense program. Permission is needed from the federal government to sell the airplane, but the state could retain the proceeds from the sale.

North Dakota State University Airplane

The committee learned NDSU does not own any airplanes but leases a King Air B200 airplane from the NDSU Development Foundation. The NDSU Development Foundation purchased the airplane for $2,348,000 in June 2007. North Dakota State University began leasing the airplane in July 2007, and the university makes quarterly lease payments of $80,730. The lease continues until July 2017, and the university can purchase the aircraft for $1 at the end of the lease.

The university uses non-general fund revenues to pay for airplane operating costs which may consist of interest income, indirect cost recoveries, transfers from department local funds, and revenues received under the North Dakota/Minnesota tuition reciprocity agreement. The current insurance policy on the airplane provides for a liability coverage limit of $100 million and a physical damage limit of $2 million. The current annual premium amount for the insurance policy is $18,395.

The airplane is used primarily to transport university personnel to other University System facilities located across the state. From March 1, 2011, to March 2, 2012, 55 percent of the passengers on the university's airplane were campus personnel. The remaining passengers were nonuniversity personnel, including members of the State Board of Higher Education and personnel from other institutions.

The committee learned the university has entered an agreement with the Fargo Jet Center to sublease the university's airplane at a fee of $660 per hour. The agreement provides that the Fargo Jet Center pay fuel and other variable costs when using the airplane. From November 2011 through June 2012, the Fargo Jet Center used the airplane 86.9 hours and provided total payments of $57,354 to the university.

The committee learned the university has its airplane for sale. As of August 1, 2012, the payoff amount for the remaining loan on the airplane was $1,312,624. The committee discussed options to authorize the Department of Transportation to purchase the university's airplane for use in a state airplane pool. The plane could be used as an additional passenger transportation airplane or to replace an older passenger airplane owned by the department.

Airplane Expenses

The committee learned airplane expenses vary significantly between similar airplanes due to the intended use of the airplane and airplane flight hours. Airplane expenses also vary significantly between years due to timing of certain expenses, such as major repairs or special aircraft uses. The committee reviewed the following information regarding state fiscal year 2011 expenses of state-owned aircraft:

Summary of Fiscal Year 2011 Airplane Expenses

	North Dakota Aeronautics Commission	Attorney General	Game and Fish Department		Highway Patrol	NDSU	Department of Transportation		
	2008 Cessna 206 (Estimated)[1]	1965 Beechcraft Baron	2006 American Champion Scout	2006 Cessna 182	2007 Cessna 206	1991 King Air B200	1975 Cessna Skymaster	1977 Piper Cheyenne	1998 King Air B200
Total flight hours	200.00	21.60	533.50	216.30	156.00	69.00	414.10	94.50	283.00
Variable costs	$19,100.00	$4,883.00	$51,699.00	$31,143.00	$20,223.00	$87,099.33	$114,259.00	$48,385	$155,071.00
Variable cost per flight hour	$95.50	$226.06	$96.91	$143.98	$129.63	$1,262.31	$275.92	$512.01	$547.95
Fixed costs	$15,421.00	$8,928.00	$79,213.00	$35,803.00	$34,679.00	$140,271.28	$196,605.00	$166,043.00	$280,251.00
Fixed costs per flight hour	$77.11	$413.33	$148.48	$165.52	$222.30	$2,032.92	$474.78	$1,757.07	$990.29
Funding allocated to reserve accounts	$7,533.00	$0.00	$0.00	$0.00	$5,928.00	$0.00	$19,458.00	$10,962.00	$50,343.00
Reserve account allocation per hour	$37.67	$0.00	$0.00	$0.00	$38.00	$0.00	$46.99	$116.00	$177.89
Total costs, excluding depreciation	$42,054.00	$13,811.00	$130,912.00	$66,946.00	$60,830.00	$227,370.61	$330,322.00	$225,390	$485,665.00

Summary of Fiscal Year 2011 Airplane Expenses									
	North Dakota Aeronautics Commission	Attorney General	Game and Fish Department		Highway Patrol	NDSU	Department of Transportation		
	2008 Cessna 206 (Estimated)[1]	1965 Beechcraft Baron	2006 American Champion Scout	2006 Cessna 182	2007 Cessna 206	1991 King Air B200	1975 Cessna Skymaster	1977 Piper Cheyenne	1998 King Air B200
Total costs per hour, excluding depreciation	$210.27	$639.40	$245.38	$309.51	$389.94	$3,295.23	$797.69	$2,385.08	$1,716.13
Depreciation cost	$0.00[2]	$4,666.00	$18,119.00	$4,687.00[3]	$19,305.00	$164,360.00	$0.00[4]	$43,225.00	$69,833.00
Depreciation cost per hour	$0.00	$216.02	$33.96	$21.67	$123.75	$2,382.03	$0.00	$457.41	$246.76
Total costs, including depreciation	$42,054.00	$18,477.00	$149,031.00	$71,633.00	$80,135.00	$391,730.61	$330,322.00	$268,615	$555,498.00
Total per hour costs, including depreciation	$210.27	$855.42	$279.35	$331.17	$513.69	$5,677.26	$797.69	$2,842.49	$1,962.89

[1]The North Dakota Aeronautics Commission purchased the Cessna 206 airplane in September 2011. The amounts listed are based on estimated flight hours and expenses for fiscal year 2012.

[2]The agency did not calculate depreciation on the airplane because the agency estimates the residual value of the aircraft to be greater than the purchase price.

[3]The airplane was purchased in October 2010. The amount shown does not reflect a full year of depreciation.

[4]The airplane has been fully depreciated.

Airplane Hangar Facilities

The committee learned some state-owned airplanes are housed in private hangars while other state-owned airplanes share hangar space. The committee received the following information regarding airplane hangars utilized by state agencies:

	North Dakota Aeronautics Commission	Attorney General	Game and Fish Department	Highway Patrol	NDSU	Department of Transportation	Department of Transportation
Location of hangar	Bismarck Airport	Bismarck Airport	Bismarck Airport	Bismarck Airport	Fargo Airport	Bismarck Airport	Bismarck Airport
Hangar owner	Bismarck Aero Center	Bismarck Aero Center	Fargo Jet Center	Fargo Jet Center	Fargo Jet Center	City of Bismarck	Bismarck Aero Center
Private or shared hangar	Shared	Shared	Shared[2]	Shared[2]	Shared	Private	Shared
Airplane(s) stored in hangar	2008 Cessna 206	1965 Beechcraft Baron	2006 American Champion Scout, 2006 Cessna 182	2007 Cessna 206	1991 Beechcraft King Air B200	1998 Beechcraft King Air B200, 1977 Piper Cheyenne	1975 Cessna Skymaster
Fiscal year 2011 lease costs	$4,730[1]	$3,260	$7,275	$5,820	$11,940	$25,003	$5,000
Fiscal year 2011 utilities cost			6,544	2,119			
Total fiscal year 2011 costs	$4,730	$3,260	$13,819	$7,939	$11,940	$25,003	$5,000

[1]The North Dakota Aeronautics Commission obtained the Cessna 206 airplane in September 2011. The amount shown is an estimate based on the hangar lease rate for the previous airplane owned by the commission.

[2]The Game and Fish Department and Highway Patrol jointly lease an aircraft hangar which is used to store airplanes owned by each agency. The hangar is also used by the Game and Fish Department pilot/mechanic to perform maintenance on the department's aircraft.

Recommendations

The committee recommends House Bill No. 1033 to create a central aircraft management system for state-owned or state-leased aircraft operated by executive branch state agencies, excluding the office of the Adjutant General and entities under the control of the State Board of Higher Education. The bill requires the Director of the Department of Transportation to operate the central aircraft management system and creates a special fund in the state treasury for proceeds related to the operation of the system. The bill also requires the agencies subject to the central management system to transfer ownership of all state-owned aircraft to the Department of Transportation on July 1, 2013.

STUDY OF OPTIONS TO RELOCATE THE HIGHWAY PATROL TRAINING ACADEMY

The Government Services Committee was assigned a study of options for relocating the Highway Patrol training academy pursuant to Section 5 of 2011 House Bill No. 1011. The study was to include a review of options for relocating the training academy, options for

relocating the emergency operations vehicle training course, and options for constructing a Highway Patrol shooting range.

Previous Studies

2003-04 Interim Law Enforcement Training Needs Study

The 2003-04 Criminal Justice Committee studied the needs of law enforcement training in the state. The committee recommended a bill to provide additional funding to the Highway Patrol for law enforcement training. The bill, which appropriated $400,000 from the general fund to the Highway Patrol to provide training to law enforcement agencies or to reimburse the Peace Officer Standards and Training Board for providing law enforcement training, was approved by the Legislative Assembly in 2005.

1993-94 Interim Study on Law Enforcement Training

The 1993-94 Budget Committee on Government Finance studied training programs for law enforcement officers, correctional officers, and emergency medical services personnel. The committee reviewed law enforcement training provided by the Highway Patrol and Bureau of Criminal Investigation, including the expansion of the Highway Patrol training academy to meet the training needs of law enforcement agencies.

The committee reviewed the following options for the training academy facility:

- Construct an addition to the existing building.
- Construct a new training facility adjacent to the National Guard armory in Bismarck.
- Construct a new training facility on land owned by the Department of Corrections and Rehabilitation.

The committee determined that it would be more economical to build an addition to the existing building at a cost of $1.4 million rather than construct a new facility at a cost of $2.6 million. In addition, the committee determined that all training facilities should be located within one building in order to minimize administrative costs and to eliminate the need to transport weapons between buildings.

The committee recommended:

- The Highway Patrol capital budget request include $1.4 million for an addition to the training academy.
- A bill to establish a $2 surcharge on motor vehicle registrations during calendar year 1996 with funds to be used for the training academy addition.

The Legislative Assembly in 1995 appropriated $1.2 million for the training academy addition with funding provided from the proceeds of short-term financing with a $2 surcharge on motor vehicle registrations in 1996 used to repay the financing.

History of Current Facility

The training academy was established in 1969 in Bismarck after receiving an appropriation from the Legislative Assembly. The Legislative Assembly appropriated $165,000 for the construction of the facility with funding from a one-time fee of 50 cents assessed to each motor vehicle driver's license that was issued during a two-year period. The facility was built in 1971 and consisted of two classrooms, dormitory rooms containing 40 beds, and a dining hall. The Legislative Assembly in 1995 approved $1.2 million of funding for an addition to the facility, which was completed in August 1997. The funding was from proceeds of short-term financing provided by the State Building Authority and repaid through a one-time assessment during 1996 of an additional $2 fee on motor vehicle registrations for passenger vehicles, trucks weighing 12,000 pounds or less, and house cars. The addition included space for a multipurpose room, four dormitory rooms, two classrooms, and an administrative office.

Location of Current Facility

The training academy is located on the south edge of the campus of Bismarck State College. The Highway Patrol utilizes a parking lot adjacent to the Bismarck Community Bowl and Aquatics Center for an emergency vehicle operations course.

Funding Provided for Current Facility

The Highway Patrol appropriation bill includes a line item for the operations of the training academy. The following table lists appropriations made by the Legislative Assembly specifically for the training academy since the 2007-09 biennium:

2011-13 biennium	$1,602,488
2009-11 biennium	$1,496,942
2007-09 biennium	$1,401,289[1]

[1]The Legislative Assembly in 2007 also authorized the Highway Patrol to transfer $100,000 of the $150,000 provided for automated external defibrillators to the training academy to provide additional law enforcement and emergency services training.

The source of funding appropriated to the training academy during these bienniums is from the general fund and the highway tax distribution fund.

Current Operations

The committee learned the training academy has a staff of six which includes a training director, field training coordinator, operations coordinator, administrative assistant, and two cooks. The following schedule details the 2011-13 biennium budget of the current training academy facility:

Salaries and benefits	$852,488
Data processing and telephone expenses	32,000
Travel	28,000
Utilities	88,000
Equipment rentals and leases	6,000
Food and clothing	114,000
Repairs	66,000
Professional development	52,000
Operating fees and services	40,000
Equipment over $5,000	26,000
Land, buildings, grounds maintenance	26,000
Insurance	2,000
Supplies, postage, printing	10,000
Professional services	260,000[1]
Total	$1,602,488

[1]Includes $250,000 for training arranged by the Peace Officer Standards and Training Board.

The training academy provides basic and advanced training for all law enforcement agencies with no charges to the agencies for tuition, room, or board. The following schedule details basic training provided by the training academy:

Training Academy - Basic Training Graduates for 2008, 2009, and 2010		
Type of Agency Served	**Number of Agencies Utilizing the Training Academy**	**Number of Basic Training Graduates**
Police departments	29	112
Sheriff's departments	35	87
State agencies	9	51
Total	73	250

The training academy does not include a shooting range. The Highway Patrol pays a fee to use a private shooting range for training activities or uses a shooting range operated by the Department of Corrections and Rehabilitation. However, the Department of Corrections and Rehabilitation shooting range is located near an elementary school which limits the hours of use of the range and the types of weapons that may be used.

Concerns With Current Location

The committee received information regarding concerns with the current location of the training academy. The emergency vehicle operations course is located on the Bismarck State College campus and presents a safety hazard to students and members of the public.

Representatives of Bismarck State College have expressed interest in using the existing training academy building if the training academy is relocated. The college has expanded substantially since the academy was originally built, and the college could utilize the existing training academy facility space. The current insured value of the building is approximately $2.5 million.

Other State Facilities Reviewed

The committee received information regarding options to use other state facilities for training. A parking lot at the State Fairgrounds in Minot could be used as an emergency vehicle operations training course. However, structures located around the parking lot may present a hazard while training, and additional funding would be required to transport students to Minot for training.

The School for the Deaf facility in Devils Lake was also reviewed as a potential option for a training academy location. The facility would need to be retrofitted for training purposes, and the facility is located in a residential area which would limit options for vehicle and weapons training.

Other Emergency Services Training Facilities

The committee received information regarding emergency services training facilities operated by selected state agencies and political subdivisions. The following is a summary of the emergency services training facilities identified:

Facility	Owned by	Location	Description	Used by
Bismarck Civic Center	City of Bismarck	315 South Fifth Street Bismarck, ND 58501	**Parking lot** • Emergency vehicle operations driver testing in parking lot	North Dakota Firefighters Association leases for training - Costs vary by event.
Bismarck Police Department - Indoor range	City of Bismarck	700 South Ninth Street Bismarck, ND 58504	**Firing range** • Indoor range - Restricted to lead-free ammunition, 5 lanes, 25 yards, computerized lanes	Currently only utilized by Bismarck Police Department personnel - State, local, and federal law enforcement agencies may use at no cost by signing a Range Use Agreement.
Bismarck Police Department - Outdoor range[1]	City of Bismarck	2300 66th Street NE Bismarck, ND 58501	**Firing range** • Outdoor range - 10 lanes, 25-yard tactical range, partially enclosed (front, left, right concrete walls, open-air baffling above, open to the rear)	State, local, and federal law enforcement agencies may use at no cost by signing a Range Use Agreement.
Bohn Armory	State of North Dakota - Adjutant General	4200 East Divide Avenue Bismarck, ND 58501	**Firing range** • Armory indoor range - 7 lanes, 50 feet, computerized, limited to .22 caliber rifles or pistols using target loads (magnum loads not permitted)	North Dakota National Guard, National Guard soldiers from other states, active duty soldiers, and law enforcement from federal, state, and local entities Cost to use facility varies by training type and includes costs for associated utilities, manpower, and materials.
Department of Corrections and Rehabilitation - Weapons range	State of North Dakota - Department of Corrections and Rehabilitation	3100 Railroad Avenue Bismarck, ND 58501	**Firing range** • Outdoor range - 10 lanes, 25-yard pistol range, and 100-yard rifle range	State and political subdivision criminal justice training is only authorized use, private use is not permitted.
Camp Grafton North	State of North Dakota - Adjutant General	4417 Highway 20 Devils Lake, ND 58301	**Firing ranges** • Military operations in urban terrain (MOUT) site • Live fire exercise shoot house	The MOUT site is used by the North Dakota National Guard, National Guard soldiers from other states, active duty soldiers, and law enforcement from federal, state, and local entities. The live fire exercise shoot house is not currently available for use. Cost to use facility varies by training type and includes costs for associated utilities, manpower, and materials.

Facility	Owned by	Location	Description	Used by
Lake Region State College	University System	1801 North College Drive Devils Lake, ND 58301	**Emergency services training facility** • Firearms training simulator	Lake Region State College peace officer training program[2]
Williston Basin Oilfield Fire Training Facility	City of Dickinson	South of city Dickinson, ND	**Fire training facility** • Limited to 25 to 30 participants due to size • Oilfield emergency training, propane training facility	North Dakota Firefighters Association leases for training at an approximate cost of $2,500 for cleanup and burn materials.
Fargo Air Force Reserve Command	State of North Dakota - Adjutant General	3920 31st Street North Fargo, ND 58102	**Firing range** • Armory indoor range - 5 lanes, 50 feet, computerized, limited to .22 caliber rifles or pistols using target loads (magnum loads not permitted)	North Dakota National Guard, National Guard soldiers from other states, active duty soldiers, and law enforcement from federal, state, and local entities Cost to use facility varies by training type and includes costs for associated utilities, manpower, and materials.
Fargo Fire Departments	City of Fargo	2701 First Avenue North Fargo, ND 58102	**Fire training facility** • Training tower • Safety grounds for various hands-on training exercises	North Dakota Firefighters Association leases for training costs based on training type.
Fargo Regional Training Center	Jointly operated by the Fargo Police Department, Cass County, NDSU Police Department, and the West Fargo Police Department	2802 North University Drive Fargo, ND 58102	**Emergency services training facility** • Firearms training simulator • 10-lane indoor 25-yard pistol range	Currently, utilized by state and local law enforcement agencies. Lake Region State College peace officer training program at a cost of approximately $12,000 per summer for facility usage[3]
Grand Forks Armory	State of North Dakota - Adjutant General	1501 48th Street South Grand Forks, ND 58201	**Firing range** • Armory indoor range - 5 lanes, 50 feet, computerized, limited to .22 caliber rifles or pistols using target loads (magnum loads not permitted)	North Dakota National Guard, National Guard soldiers from other states, active duty soldiers, and law enforcement from federal, state, and local entities Cost to use facility varies by training type and includes costs for associated utilities, manpower, and materials.
Grand Forks Public Safety Center	City of Grand Forks	1220 South 52nd Street Grand Forks, ND 58201	**Emergency services training facility** • 100-yard firing range, pistol and long gun range • ATV and special purpose vehicle training • K-9 training **Fire training grounds** • Burn equipment, live flame • Training tower	Currently utilized by state, local, and federal law enforcement agencies and city and volunteer fire departments Lake Region State College peace officer training program at a cost of approximately $12,000 per summer split between facility usage and instructional support[4] North Dakota Firefighters Association leases for training - Costs based on training type
Jamestown Rural Fire Department	City of Jamestown	205 Third Avenue NW Jamestown, ND 58401	**Fire training facility** • Live burn training	North Dakota Firefighters Association leases for training costs based on training type.
Camp Grafton South	State of North Dakota - Adjutant General	8870 Highway 15 McHenry, ND 58464	**Firing ranges** • Mine clearing line charge (MICLIC) range • M-60 and multipurpose machine gun (MPMG) range • Demolition range • M-203 range • Rifle and modified record fire (MRF) range • Combat pistol range • Zero range • Simulator building • Armory indoor range - 5 lanes, 50 feet, computerized, limited to .22 caliber rifles or pistols using target loads (magnum loads not permitted)	North Dakota National Guard, National Guard soldiers from other states, active duty soldiers, and law enforcement from federal, state, and local entities Cost to use facility varies by training type and includes costs for associated utilities, manpower, and materials.
Minot Air Force Reserve Command	State of North Dakota - Adjutant General	3420 Second Street NE Minot, ND 58703	**Firing range** • Armory indoor range - 5 lanes, 50 feet, computerized, limited to .22 caliber rifles or pistols using	North Dakota National Guard, National Guard soldiers from other states, active duty soldiers, and law enforcement from federal, state, and local entities

Facility	Owned by	Location	Description	Used by
			target loads (magnum loads not permitted)	Cost to use facility varies by training type and includes costs for associated utilities, manpower, and materials.
Minot Training Grounds	City of Minot	Near airport Minot, ND	**Fire training grounds** • Burn building • Requires equipment moved from Grand Forks at a cost of $16,000	North Dakota Firefighters Association provides training and in exchange the city of Minot does not charge a usage fee.
State Fairgrounds	State of North Dakota - State Fair Association	2005 Burdick Expressway East Minot, ND 58701	**Parking lot and grounds** • State Fire School training site, 750 to 1,000 participants • Emergency vehicle operations driver testing in parking lot • Live burn training • Armed vehicle extrication • Rope rescue/rappel training • Grain bin extrication • Hazardous gas rescue	North Dakota Firefighters Association leases facility for $25,000. Lake Region State College peace officer training program uses parking lot for emergency driving training.[5]
Wahpeton Air Force Reserve Command	State of North Dakota - Adjutant General	2003 Fourth Street North Wahpeton, ND 58075	**Firing range** • Armory indoor range - 5 lanes, 50 feet, computerized, limited to .22 caliber rifles or pistols using target loads (magnum loads not permitted)	North Dakota National Guard, National Guard soldiers from other states, active duty soldiers, and law enforcement from federal, state, and local entities Cost to use facility varies by training type and includes costs for associated utilities, manpower, and materials.

[1]The Bismarck Police Department outdoor range was paid for from federal funding as Phase 1 of a complete training complex--the 9-11 Memorial Police and Fire Training Complex. Federal funding for completion of the project as initially planned is not expected. The city has expressed willingness to donate the land to complete the training complex with the state. The Bismarck Police Department outdoor range is included in the Highway Patrol proposed training complex.

[2]Lake Region State College does not have a driving track or pistol range and long gun range. The Lake Region State College peace officer training program students travel to Minot to use the state fairgrounds parking lot for emergency driving training. Students use the Lake Region Shooting Sports Association pistol range and long gun range.

[3]Fargo Regional Training Center does not have a driving track or long gun range. Lake Region State College peace officer training program uses the Red River Valley Fairgrounds parking lot and the Hector International Airport for emergency driving training.

[4]Grand Forks Public Safety Center does not have a driving track. The Lake Region State College peace officer training program uses the Grand Forks Air Force Base helipad for emergency driving training.

[5]Lake Region State College peace officer training program in Minot uses the firing ranges of the Minot Rifle and Pistol Club--a privately owned association. The club has a 25-yard, 15-lane indoor pistol range and outdoor long gun range. The approximate cost to use the facility is $6,000.

Proposed Training Academy Facility

The committee received information regarding a proposal by the Highway Patrol to build a new training academy facility in Bismarck. The new training academy facility is proposed to be in Bismarck due to the central location and because the existing training academy is located in Bismarck. The proximity to Highway Patrol headquarters and the ability to coordinate training with other state agencies are also factors in the Highway Patrol's request to locate the facility in Bismarck.

The committee learned the city of Bismarck has adopted a long-range plan that provides for the construction of a training academy near the Bismarck landfill on 66th Street Northeast just south of Interstate 94. The city of Bismarck would provide the land to the Highway Patrol at no cost.

The committee received information regarding the cost of constructing an interchange on Interstate 94 at 66th Street Northeast. The current cost of constructing an interchange at that location is $21 million.

Proposed Facility Details

The committee learned the proposed facility would be used for police, fire, and other emergency services training. The proposed facility includes classrooms, offices, a multipurpose room, kitchen, 120-bed dormitory, outdoor training field and track, canine training field, maintenance building, outdoor tactical firing range, indoor firing range, training building, rifle range, smoke training house, emergency vehicle operations course, fire training pad, fire attack and rescue simulation building, and other training aides.

Estimated Costs of Proposed Facility

The committee learned the proposed facility would be constructed in two phases. Phase 1 would include the construction of training classrooms, indoor shooting range, storage facilities, emergency vehicle operations course, and other miscellaneous features. The schedule below details estimated construction costs associated with Phase 1 of the project.

Phase 1 Costs	Estimated Cost
Offsite costs - Utilities	$210,000
Site development costs	2,634,900
Practical training building, including indoor firing range	2,800,000
Contingency	141,120
Total	$5,786,020

Phase 2 would include the construction of a law enforcement training academy building, a 120-bed dormitory, canine training areas, a multitactical simulation building, and other miscellaneous features. The schedule below details estimated construction costs associated with Phase 2 of the project.

Phase 2 Costs	Estimated Cost
Offsite costs - Utilities	$230,000
Site development costs	3,742,700
Outdoor rifle range	1,500,000
Training academy building and dormitory	10,234,000
Multitactical simulation building	1,500,000
Contingency	860,335
Total	$18,067,035

The schedule below details total estimated construction costs of the proposed training academy facility.

Phase 1 costs	$5,786,020
Phase 2 costs	18,067,035
Total	$23,853,055

The 2011-13 executive budget recommendation included funding to begin construction of the proposed training academy facility. The budget recommendation included funding of $4,090,000 for the construction of the emergency vehicle operations course and indoor weapons range. Of the total funding, $3,558,300 was from the general fund, and $531,700 was from the highway tax distribution fund. The Legislative Assembly did not approve the funding.

Recommendations

The committee makes no recommendation regarding the study of options to relocate the Highway Patrol training academy.

STATE BUDGET INFORMATION

The Chairman of the Legislative Management assigned the committee various budget-related duties, including monitoring state revenues and expenses, receiving updated general fund revenue forecasts, reviewing the status of major state funds, and receiving information regarding state agency budgets and cost-to-continue items. The following is a summary of committee findings related to its budget-related duties.

Status of the General Fund and Other Selected Funds

The committee received updates regarding the status of the general fund as well as information regarding the preliminary revised 2011-13 biennium general fund revenue forecast. The following table provides the status of the general fund as of September 27, 2012:

Unobligated general fund balance - July 1, 2011		$996,832,711
Add		
General fund collections through August 2012	$2,898,106,861	
Forecasted general fund revenue for the remainder of the 2011-13 biennium (preliminary revised forecast)	1,962,452,670	
Total estimated general fund revenue for the 2011-13 biennium		$4,860,559,531
Balance obligated for authorized carryover from the 2009-11 biennium		106,945,443
Total estimated available		$5,964,337,685
Less		
2011-13 biennium general fund ongoing appropriations	($3,532,895,032)	
2011-13 biennium general fund one-time appropriations	(533,958,760)	
2011-13 biennium special session appropriations	(169,832,668)	
Balance obligated for authorized carryover from the 2009-11 biennium	(106,945,443)	
2011-13 biennium emergency appropriations utilized in the 2009-11 biennium	519,254	
Estimated deficiency requests, including $21.2 million for estimated federal medical assistance percentage reductions (FMAP)	(24,918,226)	
Total appropriations and estimated deficiency requests		($4,368,030,875)
Estimated general fund balance - June 30, 2013		$1,596,306,810[1]

[1]Pursuant to Section 54-27.2-02, any end-of-biennium balance in excess of $65 million must be transferred to the budget stabilization fund, up to a cap of 9.5 percent of general fund appropriations. This amount does not reflect any potential transfers.

The following is a summary of original and revised 2011-13 biennium general fund ending balance estimates:

	Estimated General Fund Ending Balance[1]
Original legislative estimate - 2011 regular legislative session	$51,123,958
Revised legislative estimate - November 2011 special legislative session	$206,892,476
Revised OMB estimate - September 2012	$1,596,306,810

[1]Does not reflect any potential transfers at the end of the 2011-13 biennium from the general fund to the budget stabilization fund pursuant to Chapter 54-27.2.

The committee received the following information from OMB regarding 2011-13 biennium transfers to the general fund:

Transfers to the General Fund			
Transfer	2011-13 Biennium Legislative Estimates	Preliminary Revised 2011-13 Biennium Forecast	Difference
State Mill profits	$6,650,000	$7,645,978	$995,978
Lottery profits	11,000,000	12,500,000	1,500,000
Property tax relief sustainability fund	295,000,000	295,000,000	0
Strategic investment and improvements fund	305,000,000	305,000,000	0
Motor vehicle fuel revenue (gas tax administration)	1,485,000	1,485,000	0
Miscellaneous	0	120,513	120,513
Total	$619,135,000	$621,751,491	$2,616,491

The committee received the following information regarding the status of selected special funds:

Fund	Actual Balance - August 31, 2012	Estimated Balance - June 30, 2013 (Legislative Forecast)	Estimated Balance - June 30, 2013 (Revised Forecast)
Budget stabilization fund	$394,218,270	$398,851,110[1]	$402,485,213
Legacy fund	$492,099,148	$618,558,299	$1,186,063,144
Foundation aid stabilization fund	$227,308,001	$235,952,922	$335,246,747
Property tax relief sustainability fund	$341,790,000	$341,790,000	$341,790,000

[1]Reflects actions taken during the November 2011 special legislative session.

2013-15 Biennium Preliminary General Fund Revenue Forecast

The committee received information regarding the revised general fund revenue forecast for the 2011-13 biennium and the preliminary 2013-15 biennium general fund revenue forecast. The following schedule compares the forecasts:

General Fund Revenue Forecasts							
	2011-13 Biennium				2013-15 Biennium		
Tax Type	2011-13 Biennium Legislative Estimates	Revised 2011-13 Biennium Forecast	Difference		2013-15 Biennium Preliminary Forecast	Difference From 2011-13 Biennium Revised Forecast	
Sales and use	$1,382,234,660	$2,095,391,016	$713,156,356	51.6%	$2,598,484,000	$503,092,984	24.0%
Motor vehicle excise	183,039,167	256,450,505	73,411,338	40.1%	325,519,000	69,068,495	26.9%
Individual income	544,665,667	872,684,013	328,018,346	60.2%	958,628,000	85,943,987	9.8%
Corporate income	126,243,667	376,529,771	250,286,104	198.3%	406,202,000	29,672,229	7.9%
Insurance premium	70,560,000	78,056,968	7,496,968	10.6%	78,056,968	0	0.0%
Financial institutions	5,041,666	7,583,160	2,541,494	50.4%	7,900,000	316,840	4.2%
Oil and gas production	133,834,000	179,259,416	45,425,416	33.9%	133,834,000	(45,425,416)	(25.3%)
Oil and gas extraction	166,166,000	120,740,313	(45,425,687)	(27.3%)	166,166,000	45,425,687	37.6%
Gaming	9,241,952	11,222,421	1,980,469	21.4%	10,800,000	(422,421)	(3.8%)
Cigarette and tobacco	43,902,000	54,695,013	10,793,013	24.6%	58,919,000	4,223,987	7.7%
Wholesale liquor	14,934,000	17,384,477	2,450,477	16.4%	18,701,000	1,316,523	7.6%
Coal conversion	35,764,000	39,065,126	3,301,126	9.2%	39,300,000	234,874	0.6%
Mineral leasing fees	17,000,000	34,781,711	17,781,711	104.6%	17,000,000	(17,781,711)	(51.1%)
Departmental collections	63,284,446	71,222,034	7,937,588	12.5%	71,222,034	0	0.0%
Interest	42,700,000	14,166,716	(28,533,284)	(66.8%)	29,366,716	15,200,000	107.3%
Total	$2,838,611,225	$4,229,232,660	$1,390,621,435	49.0%	$4,920,098,718	$690,866,058	16.3%

Preliminary 2013-15 Biennium General Fund Budget Outlook

The committee reviewed the 2013-15 biennium preliminary budget outlook which is based on the OMB September 2012 preliminary revenue forecast for the remainder of the 2011-13 biennium and for the 2013-15 biennium. The amounts shown for possible increases in state employee salaries, elementary and secondary education, higher education, major human services programs, etc., are not recommended amounts but are provided to allow users to substitute desired amounts. Only major items have been included and additional amounts that may be requested as part of agency budget requests, items that may be recommended by the Governor, and potential legislative initiatives are not reflected in the outlook.

The following schedule summarizes the preliminary general fund budget outlook:

	General Fund		
	Ongoing Revenues and Expenditures	One-Time Resources and Expenditures	Total
Beginning balance			
Estimated balance - June 30, 2013		$1,621,225,036[1]	$1,621,225,036[1]
Less: Potential deficiency appropriation requests		(72,872,008)[2]	(72,872,008)[2]
Potential transfer to budget stabilization fund		(43,882,625)[3]	(43,882,625)[3]
Estimated balance - July 1, 2013		$1,504,470,403	$1,504,470,403
Revenues			
2013-15 biennium revenues (based on the OMB September 2012 preliminary revenue forecast)	$4,920,098,718		$4,920,098,718
Transfers	360,925,000[4]		360,925,000[4]
Total revenues	$5,281,023,718		$5,281,023,718
Total 2013-15 biennium resources	$5,281,023,718	$1,504,470,403	$6,785,494,121
Appropriations			
2011-13 biennium ongoing general fund appropriations	($3,534,591,025)		($3,534,591,025)
Potential funds available	$1,746,432,693	$1,504,470,403	$3,250,903,096
Less general fund requirements due to 2011 legislative action or federal program changes			
Cost to continue the 3 percent second-year state employee salary increase for two years in the 2013-15 biennium	(8,000,000)		(8,000,000)
Cost to continue the retirement contribution increase (a state contribution of 1 percent beginning January 1, 2012, and an additional state contribution of 1 percent beginning January 1, 2013) for two years in the 2013-15 biennium	(4,916,000)		(4,916,000)
Cost to continue the new state employee minimum salary levels implemented by OMB on July 1, 2012, relating to the implementation of recommendations from the classified state employee compensation study completed by Hay Group	(1,200,000)		(1,200,000)
Cost to continue the second-year state school aid per student payment levels for two years in the 2013-15 biennium assuming no increase in student enrollment (including funding to replace the $9 million of 2009-11 biennium appropriation authority authorized to continue in the 2011-13 biennium for state aid per student payments)	(29,300,000)		(29,300,000)
Funding to support the State Department of Health's Provider Choice immunization program resulting from the loss of federal 317 vaccine for insured children vaccinated at local public health units	(2,000,000)		(2,000,000)
Cost to continue the 3 percent second-year inflationary increase for Department of Human Services' providers for two years in the 2013-15 biennium	(8,000,000)		(8,000,000)
Increased costs for Department of Human Services' grants resulting from a reduction in the FMAP (assumes an FMAP of 50 percent for federal fiscal years 2014 and 2015)	(91,500,000)		(91,500,000)
Cost to continue property tax relief in the 2013-15 biennium based on the same percentage increase from the 2009-11 biennium to the 2011-13 biennium	(48,192,400)		(48,192,400)
Funding for the Heritage Center expansion project relating to utilities and staff provided for only one year during the 2011-13 biennium	(450,000)		(450,000)
Funding for the Department of Corrections and Rehabilitation for staffing, maintenance, and inmate costs associated with the State Penitentiary expansion project	(1,500,000)		(1,500,000)
Funding for the Industrial Commission for costs associated with new employees that started at various times during the 2011-13 biennium	(230,000)		(230,000)
Funding for the Highway Patrol for costs related to new trooper positions authorized during the November 2011 special legislative session	(262,053)		(262,053)
Funding for the Department of Human Services for costs related to positions authorized during the November 2011 special legislative session for implementation of the federal Patient Protection and Affordable Care Act	(150,000)		(150,000)

	General Fund		
	Ongoing Revenues and Expenditures	One-Time Resources and Expenditures	Total
Funding for the University System for costs related to adding new medical and allied health students	(2,000,000)		(2,000,000)
Funding for the Secretary of State for costs related to three new full-time equivalent (FTE) positions authorized during the 2011-13 biennium by the Emergency Commission and Budget Section to respond to the increase in demand for services, including increases in legal business registration documents and in contractor licensing applications	(324,000)		(324,000)
Funding for the State Department of Health for costs related to three new FTE positions authorized during the 2011-13 biennium by the Emergency Commission for the department's Environmental Health Section to provide inspection, outreach, investigation, and other services relating to water quality, wastewater disposal and treatment, and oil spill response and remediation in western North Dakota	(747,500)		(747,500)
Total cost-to-continue items	($198,771,953)		($198,771,953)
Remaining balance available	$1,547,660,740	$1,504,470,403	$3,052,131,143
Other potential selected general fund spending increases the Legislative Assembly in 2013 may be asked to consider:			
State employee salary increases, excluding higher education, of 3 percent for each year of the biennium (A 1 percent salary increases costs approximately $2.81 million per year.)	($25,290,000)		($25,290,000)
State employee health insurance increases based on the preliminary estimate of approximately a 13 percent increase (monthly premium increasing from $886.62 to $1,001.72)	(13,500,000)		(13,500,000)
Additional funding for elementary and secondary education - Same dollar increase as the 2011-13 biennium	(125,000,000)		(125,000,000)
Higher education - Same dollar increase as the 2011-13 biennium (The University System has requested a base funding increase of $85.5 million for the higher education institutions, including the UND School of Medicine and Health Sciences and the Forest Service, and $146.3 million for major capital projects. The base funding increase of $85.5 million does not include funding for salary or health insurance increases for the 2013-15 biennium.)	(72,500,000)	($51,300,000)	(123,800,000)
Information technology project requests (as prioritized by the State Information Technology Advisory Committee)		(8,300,000)	(8,300,000)
Department of Human Services - Cost and caseload increases not including inflationary adjustments	(35,000,000)		(35,000,000)
Department of Human Services - Three percent annual increases for growth and inflation of major department programs	(26,700,000)		(26,700,000)
Continuation of centers of research excellence grants (same level of funding as provided for the 2011-13 biennium)		(12,000,000)	(12,000,000)
Tax Department - Additional funding for the homestead tax credit program ($1.7 million) and the disabled veterans property tax credit program ($2.9 million)	(4,600,000)		(4,600,000)
Inflationary increases of 3 percent per year for remaining agency expenditures not included above	(13,200,000)		(13,200,000)
Total other potential selected general fund spending increases	($315,790,000)	($71,600,000)	($387,390,000)
Estimated remaining funds to provide for the June 30, 2015, ending balance and agency budget requests, Governor's recommendations, and legislative initiatives that may relate to: **New programs and program enhancements;** **Infrastructure improvements, including road projects;** **Tax relief; and** **Other capital projects**	$1,231,870,740	$1,432,870,403	$2,664,741,143

[1]The estimated June 30, 2013, balance is based on the OMB September 2012 revenue forecast for the 2011-13 biennium. The amount does not include any amount resulting from 2011-13 biennium unspent general fund appropriations (turnback).

[2]Potential amount resulting from 2011-13 biennium deficiency appropriation requests include:

Department of Human Services - Grants resulting from a reduction in the FMAP for the 2013 federal fiscal year	$21,200,000
Department of Transportation - Loan repayment relating to the state match of federal emergency funding	45,600,000
Minot State University - Funding for emergency flood fighting cost not covered by the Federal Emergency Management Agency (FEMA) ($201,369) and building and infrastructure restoration costs not covered by FEMA ($1,646,613)	1,847,982
State Fair Association - Loan repayment relating to recovery and prevention efforts related to the flood disaster at the state fairgrounds	1,397,630
Tax Department - Additional funding for the disabled veterans property tax credit program	981,855
State Department of Health - Funding for costs associated with a food and lodging inspector for western North Dakota ($82,894) and loan repayment relating to costs associated with a lawsuit with the Environmental Protection Agency	582,894
Highway Patrol - Funding for increased Fleet Services costs and mileage	500,000
Forest Service - Funding for expenses associated with emergency wildland firefighting	250,000
Valley City State University - Funding for permanent hillside stabilization project	505,800
Job Service North Dakota - Interest relating to a loan for disaster unemployment assistance	5,847
Total	$72,872,008

[3]The amount shown as a potential transfer to the budget stabilization fund is based on statutory provisions requiring any ending general fund balance amounts in excess of $65 million to be deposited in the budget stabilization fund and on the assumption that 2013-15 biennium general fund appropriations will increase by approximately 10 percent over 2011-13 biennium general fund appropriations allowing the maximum balance in the budget stabilization fund to be $442.7 million. The budget stabilization fund balance is limited to 9.5 percent of biennial general fund appropriations.

[4]The amount shown reflects the following major transfers to the general fund compared to the 2011-13 biennium:

	2011-13 Biennium	2013-15 Biennium	Variance
Mill and Elevator	$6,650,000	$6,650,000	
Lottery	11,000,000	11,000,000	
Gas tax administration	1,485,000	1,485,000	
Property tax relief sustainability fund	295,000,000	341,790,000	$46,790,000
Strategic investment and improvements fund	305,000,000		(305,000,000)
Total transfers	$619,135,000	$360,925,000	($258,210,000)

Executive Budget Initiatives for the 2013-15 Biennium

The committee received information from OMB regarding major executive budget initiatives proposed for the 2013-15 biennium. The committee learned the initiatives include the following:

Area	Description	General Fund Revenue Impact	Special Funds Revenue Impact	General Fund Appropriation Impact	Special Funds Appropriation Impact
Housing	**PACE** - Increase funding for the Bank of North Dakota's PACE program, including Flex PACE, by $12 million, from $6 million to $18 million			$12,000,000	
	Housing incentive fund - Increase the maximum allowable credits available for contribution to the housing incentive fund from $15 million for the 2011-13 biennium to $20 million for the 2013-15 biennium	($5,000,000)			
	Housing incentive fund - Provide that the Bank of North Dakota provide $30 million of its earnings for direct investment in the housing incentive fund				$30,000,000
	Energy infrastructure and impact grants - Provide funding for energy infrastructure and impact grants from the oil and gas impact grant fund at $135 million, an increase of $5 million from the $130 million provided for the 2011-13 biennium		($5,000,000)		5,000,000
	Homestead tax credit program - Expand the homestead tax credit program for individuals who are aged 65 or older or permanently and totally disabled by removing the value of assets saved for retirement from the calculation of net assets and by increasing the income threshold for households to be eligible for a property tax exemption. The current income thresholds are on a graduated scale with the percentage of exemption decreasing as the level of income increases. The highest income level for exemption eligibility would increase the current level of $26,000 to $50,000 per year. The funding			20,000,000	

Area	Description	General Fund Revenue Impact	Special Funds Revenue Impact	General Fund Appropriation Impact	Special Funds Appropriation Impact
	estimated to be needed for the program for the 2013-15 biennium with these changes included is $28.7 million, an increase of $20 million from the 2011-13 biennium appropriation.				
Elementary and secondary education	**Capital construction loans** - Provide $200 million from the strategic investment and improvements fund for low-interest loans to qualified school districts for the construction of new schools or improvements or expansions to existing school buildings. This loan program would be in addition to the school construction loan program provided from the coal development trust fund.				200,000,000
	Rapid enrollment growth grants - Provide $25 million from the oil and gas impact grant fund for rapid enrollment growth grants. The Legislative Assembly appropriated $5 million from the oil and gas impact grants fund for rapidly growing schools for the 2011-13 biennium.		(20,000,000)		20,000,000
Transportation	**Oil and gas gross production tax collections** - Increase political subdivision's share of oil and gas gross production tax collections to approximately $400 million from the $252 million estimated to be received during the 2011-13 biennium		(148,000,000)		
	County and township road projects - Provide special allocations from the general fund for county and township roadway projects identified by the Upper Great Plains Transportation Institute in areas affected by oil and gas development as follows:				
	• Provide $150 million to complete county and township road projects planned and begun during the 2011-13 biennium			150,000,000	
	• Provide $145 million to continue the program for new projects during the 2013-15 biennium. The program received $142 million of one-time funding during the 2011-13 biennium.			145,000,000	
	Priority highway and road projects - Provide funding from the general fund for a new enhanced road and highway fund for one-time investments in priority highway and road projects			1,000,000,000	
	Non-oil county road projects - Provide a special allocation of funding from the general fund to non-oil counties for road projects			100,000,000	
Tax relief	The Governor's proposed tax relief plan for the 2013-15 biennium includes property tax and individual and corporate income tax relief and an enhancement of the homestead tax credit program. The Governor is proposing to provide an additional $545 million of tax relief during the 2013-15 biennium.				
	Property tax relief - Reduce school property taxes by 50 percent for school districts with an average tax levy. The statewide average mill levy for school districts is approximately 120 mills. Under the Governor's proposal, the mill levy reduction grant program currently in place will continue and be expanded to reduce school mill levies by an additional 60 mills. The cost to reduce the school mill levies by an additional 60 mills is estimated at $400 million. This amount is in addition to the funding of $342 million currently appropriated for property tax relief.			400,000,000	
	Homestead tax credit program - See information provided above under housing relating to the program expansion at an estimated cost of $20 million.				
	Individual income tax relief - The Governor's proposal will include approximately $100 million for individual income tax relief. The proposal would	(100,000,000)			

Area	Description	General Fund Revenue Impact	Special Funds Revenue Impact	General Fund Appropriation Impact	Special Funds Appropriation Impact
	reduce individual income tax rates; however, the actual rate reduction percentages are unknown at this time.				
	Corporate income tax relief - The Governor's proposal will include approximately $25 million for corporate income tax relief. The proposal would reduce corporate income tax rates; however, the actual rate reduction percentages are unknown at this time.	(25,000,000)			
	Total	($130,000,000)	($173,000,000)	$1,827,000,000	$255,000,000

Major Agency Budget Items for the 2013-15 Biennium

The committee received information from state agencies regarding major budget items for the 2013-15 biennium. The following is a list of major items discussed:

- The Department of Human Services estimates the decrease in the state's FMAP will require an additional $91.5 million in state funding in the 2013-15 biennium to maintain the current level of services.
- The State Water Commission estimates that the preliminary Fargo flood control diversion project will cost $1.8 billion, and the state share of the project is $450 million. The preliminary Minot area flood control project is estimated to cost $820 million for a levee project from Burlington to Velva.
- The Department of Transportation estimates North Dakota's federal transportation funding apportionment to be $240.5 million in federal fiscal years 2012 and 2013 and $242.5 million in 2014. This is similar to the amount of federal transportation funding currently received by the state.
- The Department of Public Instruction estimates that $53.8 million of additional funding will be needed to maintain the mill levy reduction grant program.

Oil and Gas Information

Oil and Gas Production

The committee received information from the Industrial Commission regarding the status of oil and gas production in the state. The committee learned an estimated 32,000 new wells will be drilled in the Bakken and Three Forks Formations in western North Dakota. It is anticipated that oil companies will drill 4,500 new wells to secure oil and gas leases during the next two years and will drill the remaining 27,500 wells during the following 16 years to develop each spacing unit.

The committee learned approximately 8,000 miles of gravel roads will need to be built to develop the oil and gas fields. However, the amount of needed roads can be reduced to 4,000 miles through the use of spacing units and by drilling multiple wells on one location. The spacing units will allow for the use of east-west transportation corridors every four miles which can be used to access the wells and to place pipelines and other utilities. The transportation focus for the 2013-15 biennium will be developing the gravel roads to access the drilling locations.

The committee learned there were 187 drilling rigs operating in the state as of October 11, 2012. The record number of drilling rigs in the state is 218 which occurred on May 29, 2012. The drilling rigs are moving frequently in order to secure oil and gas leases but the movement of drilling rigs is anticipated to decrease once the leases are secured and further development of spacing units begins.

During the month of August 2012 there were approximately 7,700 active oil wells in the state which produced an estimated 701,000 barrels of oil per day. Even though the number of drilling rigs has decreased, oil production continues to rise due to increased efficiencies in oil drilling operations.

The committee learned approximately 47 percent of North Dakota crude oil is transported to market by railroad with the remainder transported primarily by pipeline. North Dakota oil producers can receive approximately $24 per barrel more by transporting oil out of the state by rail rather than pipeline. The current cost of shipping oil by railcar is approximately $15 per barrel.

The committee learned the state has adopted strict regulations regarding the use of hydraulic fracturing. The state has increased transparency by requiring disclosures of chemicals used in the hydraulic fracturing process. However, discussion regarding hydraulic fracturing in other areas of the country may trigger federal rules which could negatively affect North Dakota oil and gas development.

Oil and Gas Tax Revenues

The committee received the following schedule detailing estimated allocations of oil and gas tax revenues to state funds and political subdivisions:

Oil and Gas Tax Revenue Distributions to State Funds and Political Subdivisions			
	2011-13 Biennium Legislative Estimate[1]	Revised 2011-13 Biennium Estimate[2]	Preliminary 2013-15 Biennium Estimate[3]
Oil and gas impact grant fund	$100,000,000	$100,000,000	$100,000,000
Oil and gas research fund	4,000,000	4,000,000	4,000,000
Political subdivisions	247,196,952	246,249,571	287,491,000
Legacy fund	612,468,299	1,186,063,144	1,481,076,825

Oil and Gas Tax Revenue Distributions to State Funds and Political Subdivisions			
	2011-13 Biennium Legislative Estimate[1]	Revised 2011-13 Biennium Estimate[2]	Preliminary 2013-15 Biennium Estimate[3]
Foundation aid stabilization fund	99,906,177	195,052,983	273,476,675
Common schools trust fund	99,906,177	195,052,983	273,476,675
Resources trust fund	199,812,353	390,105,967	546,953,350
General fund	300,000,000	300,000,000	300,000,000
Property tax relief sustainability fund	341,790,000	341,790,000	341,790,000
State disaster fund	0	22,000,000	22,000,000
Strategic investment and improvements fund	36,481,039	687,549,226	1,306,658,225
Total	$2,041,560,997	$3,667,863,874	$4,936,922,750

[1]Based on oil production average of 404,625 barrels per day with an average price per barrel of oil of $72 to $75.

[2]Based on oil production ranging from 425,000 to 830,000 barrels per day with an average price per barrel of oil of $70.

[3]Based on oil production ranging from 830,000 to 850,000 barrels per day and the price per barrel of oil ranging from $75 to $80. Also assumes that no changes will be made to oil and gas tax revenue distribution formulas.

Oil and Gas Impact Grant Fund

The committee received information regarding the energy infrastructure and impact grant program. The program is used to meet emergency and extraordinary needs of political subdivisions resulting from energy development activities. The Legislative Assembly in 2011, provided for the deposit of $100 million of oil and gas production tax collections in the oil and gas impact grant fund for regular grant distributions. Funding of $5 million from the state general fund is also provided to the grant program for new oil-producing counties and an additional $30 million is being provided from the state general fund to the grant program with an emphasis on addressing emergency services needs.

A total of $55,820,998 of 2011-13 biennium energy impact grant awards were awarded through March 2012 as follows:

July 2011 - City infrastructure - Hub cities[1]	$21,000,000
July 2011 - City infrastructure - Smaller cities	32,500,000
August 2011 - Firefighters training	20,000
December 2011 - Township roadways	2,000,998
December 2011 - Housing and Urban Development communities planning grant	300,000
Total	$55,820,998

[1]Hub cities include Dickinson, Minot, and Williston.

Other Information Received

Status of Public Employees Retirement System

The committee received information regarding the status of the Public Employees Retirement System (PERS). The balance of the public employee's retirement fund is currently at approximately 70 percent of the actuarial value of accrued benefits. The Legislative Assembly authorized an increase of 1 percent in employee and 1 percent in employer retirement fund contributions during each year of the 2011-13 biennium. The Public Employees Retirement System Board is recommending an additional 1 percent employee and 1 percent employer contributions for each year of the 2013-15 biennium. The Public Employees Retirement System estimates the total cost to the state for the recommended employer contribution increases during the 2013-15 biennium is $9,992,565.

Classified State Employee Compensation System - Implementation of Hay Group Recommendations

The committee received information on the status of the implementation of Hay Group recommendations for the classified state employee compensation system. A revised grade structure was developed based on job evaluations and market-based ranges determined from a salary survey. All state job classifications were reviewed to determine placement into the appropriate grade ranges. The new grade ranges became effective on July 1, 2012. As a result, approximately 745 employees have salary levels which are below the minimum salary amounts established in the new grade ranges. The total cost of providing salary increases to these employees to bring them to the new minimum salary levels is $1.9 million in total for state fiscal year 2013.

Fleet Services Rates and 2013-15 Biennium Budget Guidelines

The committee received information regarding budget guidelines issued to state agencies by the Department of Transportation for Fleet Services vehicle rental rates for the 2013-15 biennium. The budget guidelines provide an estimate for the per mile or per hour operating rate of several classes of vehicles. The rates are developed based on historical operating costs, estimated depreciation costs, and estimated vehicle replacement costs. The rates also account for excess revenues or deficits resulting from actual costs differing from charged costs in previous budget periods.

Information Technology Department 2013-15 Biennium Budget Guidelines

The committee received an overview of budget guidelines issued to state agencies by the Information Technology Department for information technology services during the 2013-15 biennium. The department issues budget guidelines for information technology services in April of even-numbered years. The budget rates established by the department are based on the actual cost of providing the services.

Sales Tax Collections

The committee received information regarding sales and use tax collections by region and industry. Counties in areas affected by oil and gas development have experienced significant increase in sales and use tax collections. The committee learned in 2007, 4.92 percent of total state sales and use tax collections were attributable to Williams County compared to 16.74 percent for the third quarter of 2011. Sales and

use tax collections in the mining and oil extraction sector increased by 98.51 percent in one year, from the third quarter of 2010 to the third quarter of 2011.

Elementary and Secondary Education Information

The committee received information regarding various elementary and secondary education issues. The committee learned the Legislative Assembly in 2011 appropriated $341.79 million for mill levy reduction grants for the 2011-13 biennium. The committee reviewed the following schedule regarding grant funding used and estimated funding needed for the program:

Biennium	Total Mill Levy Reduction Grants
2009-11 actual	$299,444,264
2011-13 estimated	$331,525,288
2013-15 estimated	$395,622,720

The committee learned the Legislative Assembly in 2011 provided $5 million of funding from the oil and gas impact grant fund for rapid enrollment grants to school districts. Schools that had enrollment increase by at least 7 percent annually, subject to a minimum increase of 25 students, were eligible to receive a grant. Ten school districts received total grant funding of $2,408,560 during the first year of the biennium. Nineteen school districts are estimated to receive total grant funding of $2,591,440 during the second year of the biennium. The second year grant funding calculation totaled $5,914,280 but payments were prorated due to the remaining amount of funding available. The department may request a deficiency appropriation of $3,322,840 from the Legislative Assembly in 2013 in order to provide full grant funding to the school districts.

The committee received information regarding school breakfast and lunch program funding. The committee reviewed the following information regarding estimated total federal and state funding budgeted for school breakfast and lunch programs:

	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium
Federal funds	$47,982,428	$55,688,116	$59,561,778
State matching funds	1,384,386	1,524,996	1,525,182
Total	$49,366,814	$57,213,112	$61,086,960

The committee reviewed the following schedule detailing the reimbursement rates for each school breakfast and lunch program meal:

Program	Free	Reduced Price	Full Price
School lunch	$2.86	$2.46	$0.27
School breakfast	$1.55	$1.25	$0.27

Homestead and Disabled Veterans Property Tax Credit Programs

The committee received information regarding the homestead and disabled veterans property tax credit programs. The committee learned the homestead tax credit program is available to senior citizens or disabled persons and reduces eligible homeowners' property tax liabilities. The program is also available to senior citizens and disabled persons who rent. A refund is provided to renters based on income and rent payment levels.

The disabled veterans property tax credit program is available to veterans that have been honorably discharged from the United States armed forces and have at least a 50 percent service-related disability. The tax credit is applied to the property taxes of the home owned and occupied by the disabled veteran or by an unremarried surviving spouse of a disabled veteran.

The committee reviewed the following information regarding current and estimated future appropriations needed for the programs:

	Homestead Tax Credit	Disabled Veterans Tax Credit
2011-13 biennium general fund appropriation	$8,792,788	$4,243,920
Estimated 2011-13 biennium deficiency appropriation needed	$0	$981,855
Estimated 2013-15 biennium general fund appropriation needed	$10,685,000	$7,178,000

Rebuilders Loan Program

The committee received information regarding the rebuilders loan program which was created by the Legislative Assembly in the November 2011 special session to assist homeowners affected by flooding. The committee learned the Legislative Assembly appropriated $30 million from Bank of North Dakota profits and $20 million from the general fund for the program. A total of 1,521 applications for the program were received by the September 30, 2012, application deadline. The committee reviewed the following schedule detailing the status of the applications as of October 5, 2012:

Rebuilders Loan Program Applications		
Status	**Number**	**Value**
Approved - Closed	1,208	$35,217,857[1]
Approved - Not closed	212	5,580,125
Waiting for information	55	1,626,000
Waiting for review	4	120,000
Rejected or cancelled	42	
Total	1,521	$42,543,982

[1]A total of $32,679,665 of loan funds have been disbursed.

The following schedule details the locations of properties for which loans have been approved:

Location	Number of Loans
Bismarck	57
Mandan	18
Minot and surrounding areas	1,345
Total	1,420

Transportation Information

The committee received information regarding various transportation issues. The Department of Transportation is addressing infrastructure needs in western North Dakota caused by oil and gas development. The department spent approximately

$635 million on state projects in the western part of the state between 2008 and 2011, and the department plans to spend an additional $305 million for state road projects in the western part of the state in 2012.

The committee learned that 2011-13 biennium distributions from the highway tax distribution fund through July 2012 totaled $295.8 million, $72.3 million or 32.3 percent more than the department's original estimate of $225.5 million. Distributions from the fund are made to the state highway fund, counties, cities, townships, and the public transportation fund.

The committee learned the Department of Transportation and Highway Patrol implemented a new online process to allow nonresidents employed in the state to obtain a temporary motor vehicle registration. During calendar year 2011 there were 6,849 temporary motor vehicle registrations issued which generated fee collections of approximately $1.64 million. For the 2011-13 biennium through September 2012, there have been 10,208 temporary motor vehicle registrations issued and approximately $3.02 million of fees collected. The committee also received the following schedule detailing the number of motor vehicles registered in the state during each calendar year since 2007:

Total Motor Vehicle Registrations				
2007	**2008**	**2009**	**2010**	**2011**
902,581	960,125	952,616	945,282	1,048,240

Recommendations

The committee makes no recommendations relating to its budget-related duties.

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 2011-12 interim.

The committee received information regarding the history of the bistate authority legislation. The South Dakota Legislature in 1996 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 2011-12 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

HEALTH CARE REFORM REVIEW COMMITTEE

The Health Care Reform Review Committee was assigned three studies.

Section 1 of 2011 House Bill No. 1252 directed the committee to monitor the impact of the Patient Protection and Affordable Care Act (PPACA), as amended by the Health Care and Education Reconciliation Act of 2010; rules adopted by federal agencies as a result of that legislation; and any amendments to that legislation. The study charge directed the committee to report to the Legislative Management before a special session of the Legislative Assembly if a special session is necessary to adopt legislation in response to the federal legislation.

Senate Concurrent Resolution No. 4005 (2011) directed the committee to study the impact of the PPACA and the Affordable Care Act (ACA) on the Comprehensive Health Association of North Dakota (CHAND) and the statutes governing CHAND.

Legislative Management directive directed the committee to study the feasibility and desirability of developing a state plan that provides North Dakota citizens with access to and coverage for health care which is affordable for all North Dakota citizens.

In addition to the committee's three studies, the Health Care Reform Review Committee was charged with receiving the following updates:

- Regular updates from the Insurance Commissioner during the 2011-12 interim regarding administration and enforcement of the PPACA, proposed legislation for consideration at a special legislative session, and proposed legislation by October 15, 2012, for the 2013 regular session (2011 House Bill No. 1125, Section 2);
- Regular updates from the Insurance Commissioner and Department of Human Services during the 2011-12 interim on planning and implementing an American health benefit exchange for the state and proposed legislation for consideration at a special legislative session, or proposed legislation by October 15, 2012, for the 2013 regular session (2011 House Bill No. 1126, Section 3); and
- Regular updates from the Insurance Commissioner during the 2011-12 interim with respect to steps taken to ensure health insurer procedures are in compliance with the PPACA, proposed legislation for consideration at a special legislative session if the commissioner is required by federal law to implement any requirement before January 1, 2013, and proposed legislation by October 15, 2012, for any requirement that must be implemented between January 1, 2013, and January 1, 2014 (2011 House Bill No. 1127, Section 6).

Committee members were Representatives George J. Keiser (Chairman), Donald L. Clark, Robert Frantsvog, Eliot Glassheim, Nancy Johnson, Lee Kaldor, Jim Kasper, Gary Kreidt, Lisa Meier, Ralph Metcalf, Marvin E. Nelson, Karen M. Rohr, Robin Weisz, and Lonny B. Winrich and Senators Spencer D. Berry, Dick Dever, Jerry Klein, Judy Lee, and Tim Mathern.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

PRE-SPECIAL SESSION

In preparation for a special session, the committee conducted six meetings at which it pursued the three studies and received regular updates as directed. The committee submitted this portion of the report (which ends at the heading **SPECIAL SESSION**) to the Legislative Management on November 3, 2011. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly, which met in special session November 7-11, 2011.

BACKGROUND

Affordable Care Act

In March 2010 President Barack Obama signed into law two pieces of legislation that laid the foundation for a multiyear effort to implement health care reform in the United States--PPACA (H.R.3590) and the Health Care and Education Reconciliation Act of 2010 (H.R.4872)--which together are referred to as ACA. The ACA crafted new structural models to increase access to and affordability of health care coverage, with as many as 32 million additional Americans being covered; to improve operational governance of the health insurance industry; to provide consumers protection; and to provide new tools for the improvement of the health care delivery system and patient outcomes.

Of particular interest to states regarding the ACA are the multiple specific provisions of the ACA and the implementation timeline of these specific provisions. The National Conference of State Legislatures (NCSL) identified and summarized the following ACA provisions and dates as being of interest to state legislatures:

2010

- High-risk pools established by states or federal government.
- Small business tax credits offered for employees' health coverage.
- Insurance companies required to cover young people to age 26 on their parents' plans.
- Prescription coverage gap for seniors reduced.
- Federal grants awarded to states for insurance premium reviews, health insurance exchanges, and other programs.
- Insurance companies restricted from dropping coverage for people who get sick or excluding coverage for kids with preexisting conditions.
- States offered option to expand Medicaid earlier than 2014 to cover adults with incomes up to 133 percent of poverty, at the state's regular Medicaid matching rate.

2011-13

- Medicare reforms required, such as ensuring access to physicians, improving payment accuracy, and prescription drug coverage.

2014

- Medicaid must cover an estimated 16 million additional people by 2017.
- Health exchanges start, with federal subsidies to help middle-income Americans purchase coverage.
- Individuals must purchase health insurance, with some exceptions.
- Insurance companies must cover people with preexisting conditions and policies must be renewed even if people get sick.
- Employers with 50 or more full-time employees must offer coverage or pay a fee.

2016

- States have option to join multistate compacts.

2018

- High-cost or so-called "Cadillac" health plans will be taxed.

In addition to the items addressed in the NCSL timeline, the ACA provides two deadlines by which a state must meet external review processes. The ACA provides that by January 1, 2012, group health plans and health insurance issuers in the group and individual market must comply with a state external review process that:

1. At a minimum includes the consumer protections set forth in the Uniform Health Carrier External Review Model Act issued by the National Association of Insurance Commissioners (NAIC), referred to as being an "NAIC-parallel process"; or
2. Meets the federal Department of Health and Human Services (HHS) 16-point standards, referred to as being an "NAIC-similar process."

Compliance with the NAIC-similar processes is a temporary status such that by January 1, 2014, all health plans and health insurance issuers in the group and individual market must comply with an NAIC-parallel process. If by January 1, 2012, the state process is neither an NAIC-parallel process nor an NAIC-similar process, and if by January 1, 2014, the state process is not an NAIC-parallel process, the state's health insurance issuers in the state will be subject to a federally-administered external review process. (United States Department of Labor Technical Release 2011-02, dated June 22, 2011.)

2009-10 Interim Industry, Business, and Labor Committee Study

During the 2009-10 interim, the chairman of the Legislative Management directed the interim Industry, Business, and Labor Committee to monitor 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).

The interim Industry, Business, and Labor Committee received testimony from a wide range of interested parties, including representatives of the:

1. Insurance Commissioner;
2. Department of Human Services;
3. PERS;
4. State Department of Health;
5. Tax Commissioner;
6. Bank of North Dakota;
7. Cato Institute;
8. George Mason University Center for Health Policy Research and Ethics;
9. Pharmaceutical Research and Manufacturers of America;
10. Cameron Institute;
11. Health Services Management Programme at McMaster University located in Hamilton, Ontario;
12. North Dakota Medical Association;
13. North Dakota Hospital Association;
14. North Dakota Pharmacists Association;
15. Blue Cross Blue Shield of North Dakota; and
16. Business owners and farm groups.

The interim committee recommended House Concurrent Resolution No. 3003 to direct the Legislative Management to continue studying the impact of the ACA during the next interim. Although the resolution was adopted, the Legislative Management did not prioritize the study.

The chairman of the committee developed and the committee approved a summary identifying the anticipated costs to the state of implementation of the ACA.

2011 Legislation

House Bill No. 1004

As introduced, the State Department of Health appropriation bill would have authorized the State Department of Health to apply for and spend ACA-related grants for public health infrastructure in the amount of $200,000, abstinence programs in the amount of $182,100, and intensive home visiting in the amount of $1,413,012. These appropriation clauses were not included in the enrolled version of the bill.

House Bill No. 1125

This bill directed the Insurance Commissioner to administer and enforce the provisions of the ACA.

House Bill No. 1126

This bill directed the Insurance Commissioner and the Department of Human Services to plan for the implementation of a state American health benefit exchange that facilitates the purchase of qualified health benefit plans, provides for the establishment of a small business health options program, implements eligibility determination and enrollment of individuals in the state's medical assistance program and the state's children's health insurance program (CHIP), provides simplification, provides coordination among the state's

health programs, and meets the requirements of the ACA; provides deadlines for implementing the exchange; directs the Insurance Commissioner and the Department of Human Services to collaborate with the Information Technology Department; and authorizes the Insurance Commissioner and the Department of Human Services to receive from and provide to federal and state agencies information gathered in the administration of the exchange as necessary. Additionally, this bill authorized the Insurance Commissioner to apply for and spend up to $1 million in federal grants for establishing the state's health benefit exchange.

House Bill No. 1127

This bill amended North Dakota law impacting health plans in order to implement the necessary provisions of the ACA, including limitations on risks, independent external review, external appeal procedures, and internal claims and appeals procedures.

House Bill No. 1165

This bill provided that subject to certain exclusions, regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer or under a plan sponsored by the state or federal government, the resident is not required to obtain or maintain a policy of individual health coverage except as may be required by a court or by the Department of Human Services through a court or administrative proceeding.

Senate Bill No. 2010

As introduced, the Insurance Commissioner appropriation bill would have appropriated other funds in the amount of $2,504,005 and authorized five full-time equivalent (FTE) positions for the purpose of funding enhanced insurance premium rate review activities related to the ACA. As enacted, the bill appropriated other funds in the amount of $1,418,637 and did not authorize any additional FTE positions for this purpose.

Senate Bill No. 2012

As introduced, the Department of Human Services appropriation bill would have appropriated general funds in the amount of $225,507 and other funds in the amount of $305,588 and authorized seven FTE positions to fund the expansion of the Medicaid program. As enrolled, this bill did not include the appropriation or the FTE request.

Senate Bill No. 2037

This bill changed the membership of the Health Information Technology Advisory Committee by adding the chairman of the House Human Services Committee and the chairman of the Senate Human Services Committee or, if either or both of them are unwilling or unable to serve, a replacement selected by the chairman of the Legislative Management. The bill authorized the Health Information Technology Advisory Committee to accept private contributions, gifts, and grants. The bill required the director of the Health Information Technology Office to implement and administer a health information exchange that utilizes information infrastructure and systems in a secure and cost-effective manner to facilitate the collection, storage, and transmission of health records; adopt rules for the use of health information, use of the health information exchange, and participation in the health information exchange; and adopt rules for accessing the health information exchange to ensure appropriate and required privacy and security protections and relating to the authority of the director to suspend, eliminate, or terminate the right to participate in the health information exchange. The bill also required the director to determine fees and charges for access and participation in the health information exchange and to consult and coordinate with the State Department of Health and the Department of Human Services to facilitate the collection of health information from health care providers and state agencies for public health purposes. The bill required each executive branch state agency and each institution of higher education that implements, acquires, or upgrades health information technology systems, by January 1, 2015, to use health information technology systems and products that meet minimum standards adopted by the Health Information Technology Office for accessing the health information exchange. The bill provided that any individually identifiable health information submitted to, stored in, or transmitted by the health information exchange is confidential and any other information relating to patients, individuals, or individually identifiable demographic information contained in a master client index submitted to, stored in, or transmitted by the health information exchange is an exempt record. The bill provided immunity from criminal or civil liability for any health care provider that relies in good faith upon any information provided through the health information exchange in the treatment of a patient for any damages caused by that good-faith reliance. The bill provided that effective January 1, 2015, an executive branch state agency, an institution of higher education, and any health care provider or other person participating in the health information exchange may use only an electronic health record system for use in the exchange which is certified under rules adopted by the Office of the National Coordinator for Health Information Technology.

Senate Bill No. 2309

This bill provided that the ACA likely is not authorized by the United States Constitution and may violate its true meaning and intent as given by the Founders and ratifiers. The bill required the Legislative Assembly to consider enacting any measure necessary to prevent the enforcement of the ACA within this state and provided that no provision of the ACA may interfere with an individual's choice of a medical or insurance provider except as otherwise provided by the laws of this state.

TESTIMONY

The committee held six committee meetings before the 2011 special session. The primary focus of these meetings was determining what actions the state should

take to address the health benefit exchange requirement under the ACA and reviewing additional information regarding other elements of the ACA, such as Medicaid expansion and external review requirements.

Health Benefit Exchange

In order to prepare for the 2011 special session, the committee received updates from state agencies regarding the status of other states' implementation of the health benefit exchange requirement under the ACA as well as the status of federal laws and rules relating to the health benefit exchange; received a presentation by Mr. Michael O. Leavitt of Leavitt Partners, Salt Lake City, Utah, regarding the steps taken in Utah to create a health benefit exchange and how North Dakota may learn from this experience; held panel discussions at which the committee heard health benefit exchange perspectives of insurers, licensed insurance producers, medical professionals, hospitals, consumers, and businesses; informally surveyed state agencies and nonprofit entities for opinions relating to governance of health benefit exchanges and expectations of health benefit exchanges; and reviewed several bill drafts relating to creation of a state administered health benefit exchange.

State-Administered Health Benefit Exchange

At the committee's first meeting the committee voted to pursue legislation to provide for a state-administered health benefit exchange while keeping opportunities open for cooperation with other states; however, throughout the committee's meetings the committee continued to discuss the option of federal administration and the option of a federal-state partnership for a federally administered health benefit exchange and continued to discuss the pros and cons of starting under one administration model and transitioning to another.

Montana is the only state that requested information from North Dakota regarding a multistate health benefit exchange, and this inquiry was due to a legislative directive. The committee received information that from an information technology standpoint, integration of the health benefit exchange system would work better if kept in-state. A representative of the Information Technology Department expressed concern regarding difficulties of having states share a health benefit exchange system when the state health benefit requirements vary from state to state. Additionally, a representative of the Information Technology Department testified that as an example of challenges the state may face if working with one or more other states in designing a health benefit exchange, the state is working with a neighboring state on the health information exchange system. Issues arise because that other state is not working as fast as North Dakota. The committee received testimony from a representative of the health insurance industry that although multistate exchanges may allow states to join in vendor contracts with other states, typically an insurer's products vary significantly from state to state.

The committee received testimony from insurers in support of a state-administered health benefit exchange.

The committee received status updates from representatives of the Insurance Department regarding which states have opted to have the federal government administer the state's health benefit exchange and which states have opted to administer their own health benefit exchange. The Insurance Commissioner requested the committee keep an open mind to allowing federal administration of the health benefit exchange because there are several unknowns that may impact the desirability of having a state-administered health benefit exchange, such as essential benefits, the final HHS rules, and the United States Supreme Court's ruling on the constitutionality of the ACA.

The committee received information that by January 1, 2013, HHS will approve, conditionally approve, or reject each state's health benefit exchange plan. The proposed HHS rules clarify that if a state begins with a federally administered health benefit exchange, the state retains the option to take over administration at a later date.

Committee members expressed frustration in being in the position to design health benefit exchange legislation without firm financial figures regarding the costs associated with designing and running an exchange.

The committee received testimony regarding options for administration of a state health benefit exchange, including state administration, federal administration, or a state-federal partnership for administration. Testimony indicated a partnership model technically would be a federally administered health benefit exchange.

Status Reports and Updates

The Insurance Commissioner and representatives of the Insurance Department made regular status reports to the committee regarding:

- The federal grants that are available to states to assist in implementation of the health benefit exchanges--planning grants, innovator grants, and establishment grants--and the status of these grants;
- The NAIC's and Insurance Commissioner's duties under the ACA as well as the timeline for implementation of the ACA;
- The status of states' implementation of the ACA's health benefit exchange requirement; and
- The HHS proposed rules regarding the ACA.

The committee reviewed HHS proposed rules regarding the ACA. The committee received testimony that it is expected the HHS comment period for the proposed rules will close October 31, 2011, and the final rules regarding the definition of essential benefits are not expected until May 2012 at the earliest. The committee referenced the HHS proposed rules in developing the language for the health benefit exchange bill drafts.

On July 22, 2011, North Dakota became the first state for which HHS denied an adjustment request for implementing the ACA medical loss ratio provision. The Insurance Commissioner had requested a three-year phase-in approach to the 80 percent medical loss ratio requirements under the ACA. The HHS decision was based on HHS's finding the state's adjustment request did not prove health insurance issuers would leave the

market if the adjustment was not granted. The Insurance Commissioner did not appeal this decision.

The committee received a final report on the Insurance Commissioner's stakeholder meetings held across the state on behalf of the Insurance Commissioner, Department of Human Services, and Information Technology Department. The final report indicated a majority of participants thought the state should administer the health benefit exchange; reoccurring themes included cost concerns, whether health plans will be affordable; confusion, the desire that the health benefit exchange is easy to use and consumers are able to easily compare health plans; the need for assistance in using the health benefit exchange and the importance of there being a person to answer questions and help those who do not want to or are unable to apply online; and the desire of choice as consumers want competition among carriers but they are also concerned about being overwhelmed by too much choice.

The committee reviewed the Insurance Commissioner's request for proposal (RFP) seeking a qualified and experienced firm to conduct background research, analyze data, identify options, and recommend a viable plan for developing and sustaining a health benefit exchange in the state. The RFP proposed the following contract schedule:

- Contract start date--August 26, 2011;
- Kick-off meeting with Insurance Department and other state agencies--September 6, 2011;
- Contractor begins providing biweekly progress reports--September 9, 2011;
- Contractor submits interim project report--September 28, 2011;
- Insurance Commissioner provides contractor with comments for revision of interim report as needed--October 5, 2011;
- Contractor submits revised interim report--October 10, 2011;
- Contractor submits final report--December 2, 2011; and
- Informal debriefing--December 9, 2011.

The committee received testimony from a representative of HTMS, Indianapolis, Indiana--the firm that was selected under the RFP--regarding the services HTMS is performing for the Insurance Commissioner under the contract. The actual schedule of deliverables varied slightly from the RFP's proposed schedule, but the schedule did provide for an interim report to be delivered by October 31, 2011, in order for the material to be available for the special session scheduled to begin November 7, 2011.

Michael O. Leavitt

The committee received a presentation from Mr. Leavitt regarding the ACA and the steps taken by Utah to create a health benefit exchange. Mr. Leavitt testified:

- North Dakota needs to consider how best to meet the needs of North Dakota.
- HHS will likely acknowledge the state's good faith attempts and recognize the needs of the state.
- A state should not utilize a federally administered exchange.
- The two basic questions are what is the role of government and should the health benefit exchange be inside state government or outside state government? He testified in support of government involvement in health care reform but stressed the importance of focusing on the nature of government involvement. He stated he supports the government role of helping construct an efficient environment for health care.
- The primary problem with the country's current health care system is that it focuses on volume over value, with the system based on fee for services and incentivizing high numbers of procedures instead of quality outcomes.

The Insurance Commissioner reviewed the Utah and Massachusetts health benefit exchanges, and reminded the committee that the Utah exchange does not meet the ACA requirements.

Panel Discussions

The committee held five panel discussions and received information from individuals representing health care insurers, licensed insurance producers, consumers, employers, medical professionals, and hospitals regarding:

1. The impact of the health benefit exchange on the health insurance industry;
2. The impact of the health benefit exchange on health care providers, hospitals, consumers, insurance agents, and employers;
3. Whether the state's health benefit exchange should be designed to include two separate risk pools--one for individuals and one for small businesses, called a small business health insurance program (SHOP) exchange--or whether the exchange should be designed to combine both the individual and the small business policies into a single risk pool;
4. Whether the state should restrict whether health insurers may choose to offer policies outside the state's health benefit exchange; and
5. Whether the state's health benefit exchange under the ACA should limit the qualified health plans offered through the exchange to the four benefit levels--platinum, gold, silver, and bronze--or should allow multiple types of plans within each of the benefit levels.

The committee considered the information provided at these panel discussions as the committee developed the health benefit exchange bill drafts.

Surveys

The committee performed an informal survey of state agencies and nonprofit entities to determine whether any of the state agencies or nonprofit entities in the state were interested in administering the state's health benefit exchange. None of the responding state agencies or state's nonprofit entities expressed a desire to fulfill the primary role of administering the state's health benefit exchange but several did express a

willingness to participate in a board designed to govern such a health benefit exchange.

BILL DRAFTS

The committee began the health benefit exchange bill drafting process by reviewing three separate bill drafts, each of which was based on the NAIC American Health Benefit Exchange Model Act:

1. The first bill draft was revised based on the recommendations of a group of stakeholders--AARP, Blue Cross Blue Shield of North Dakota, Medica, and Sanford Health--which worked together to create a consensus draft;
2. The second bill draft was based on the first bill draft with the primary revisions requiring navigators be licensed insurance producers and to comply with specified continuing education requirements, providing the health benefit exchange would be governed and administered by the Office of Management and Budget (OMB) and an appointed board, providing funding through a premium tax, and clarifying the health benefit exchange would not create dual regulation of health insurance;
3. The third bill draft also was based on the first bill draft with the following revisions:
   a. The governance model differed, including specific language providing for tribal involvement;
   b. Repeal of CHAND;
   c. Provision of a financing mechanism for the health benefit exchange, providing for the funding for CHAND to be transitioned to fund the exchange;
   d. The conflict of interest restrictions for the health benefit exchange board were more specific; and
   e. The health benefit exchange board was provided flexibility in several matters, including whether to establish a single risk pool for individual and small group policies and in developing navigator requirements.

The committee used the second bill draft as the vehicle for the design of the state's proposed health benefit exchange. Through the bill draft review process, the bill draft underwent several revisions. In revising the committee health benefit exchange bill draft the topics addressed by the committee included administration, board membership, risk pools, the market inside and outside the exchange, navigators, small employer definition, administrative hearings, funding, and technology.

Administration

The Insurance Commissioner testified in opposition to being charged with building or administering the state's health benefit exchange due to inherent conflicts of interest. However, the commissioner did support the concept of the Insurance Commissioner serving in an advisory capacity or serving as a member of the board of a board-administered exchange.

The committee received testimony from insurers in support of creating a state-administered health benefit exchange that meets the minimum requirements of the ACA, allowing for a design approach that will allow the state to add additional functions to the exchange once the state has a better understanding of what the state's needs are and as the individual and group markets adapt to the ACA.

Although representatives of the health insurance industry testified in support of a state-administered health benefit exchange, the committee also received testimony from insurers in support of a state-administered health benefit exchange that is governed by a nonprofit board, to ensure decisions are made free from political pressure or influence.

The committee received testimony from a representative of the Governor's office that the Governor would support a state-administered health benefit exchange that would provide for OMB to provide administrative services to a board of stakeholders that would actually govern the exchange, that would provide for the Information Technology Department to provide technology support, and that would provide the Department of Human Services would address eligibility for the Medicaid and CHIP programs.

The committee received testimony that the state's health benefit exchange should ensure that the health insurance plans offered through the exchange should have a high level of transparency and accountability in order for patients to make informed health care purchasing decisions. Additionally, steps should be taken to guard against cost-containment mechanisms that are termed quality measures.

The committee received testimony from a representative of the North Dakota Medical Association that insurance coverage options offered in a health benefit exchange should be self-supporting, have uniform solvency requirements, not receive special advantages from government subsidies, include payment rates established through meaningful negotiations and contracts, not require provider participation, and not restrict enrollees' access to out-of-network physicians.

Board Members

The committee considered several alternatives addressing the makeup of the membership of the health benefit exchange policymaking board. Related to the board composition and board policies, the committee addressed the issue of conflicts of interest for board members. Representatives of consumer organizations testified in opposition to allowing governing board members who have conflicts of interest due to affiliations with health care industries.

In establishing the makeup of the board, the committee considered the appropriate size and makeup of the board, including whether legislators should serve on the board and if so whether they should be voting members; how to define or designate who might qualify as a representative of consumers; whether to include representatives of physicians and other medical professions and whether to include representatives of

health care facilities; and whether licensed insurance producers should be represented on the board. Additionally, the committee considered whether the members of the board should receive per diem and reimbursement for board-related expenses such as travel, food, and lodging.

Risk Pools

Although the committee did receive some testimony in support of a single risk pool for the individual market and the small group market, the Insurance Commissioner and representatives of the health insurance industry testified in support of keeping these two risk pools separate. The committee received testimony there is concern that if the two risk pools are joined, the premiums for small groups would increase as a result.

Market Inside and Outside Exchange

The committee considered whether the health benefit exchange should take steps to minimize adverse selection as it relates to consumers purchasing health coverage from inside the exchange versus outside the exchange or whether steps should be taken to otherwise increase the success and viability of the health benefit exchange, including considering whether the health benefit exchange might provide that in order to sell outside the exchange an insurer is required to also sell inside the exchange. In addition, the committee considered whether the health benefit exchange should have the authority to limit the number of policies offered inside the exchange.

Generally, the committee received testimony from health insurers in support of consumer choice and consumer flexibility. However, at least one insurer testified in support of requiring a company interested in selling a product outside the exchange also be required to offer products inside the exchange in order to address the concern of adverse selection or cherry picking. Additionally, the committee received testimony that in order to keep health benefit exchange administration costs low and to minimize consumer confusion, it may be reasonable to restrict each insurer to two product options within each metallic level in the individual market and the same two product limitations within the small group market and to require that anyone wishing to sell health insurance in North Dakota must be part of the health benefit exchange.

The committee received testimony from a representative of a consumer organization in support of requiring insurers to offer similar products inside and outside the exchange to mitigate adverse selection. The committee also received testimony from a representative of a consumer organization in support of designing a health benefit exchange that acts as an active purchaser.

Navigators

The committee considered how the HHS proposed rules impact the ability of licensed insurance producers to enroll consumers in health policies through the health benefit exchange, receive compensation from an insurer, and receive navigator grants under the health benefit exchange.

The Insurance Commissioner testified the overwhelming opinion is that licensed insurance producers need to continue to be involved in the health benefit exchanges. Additionally, the committee received testimony from licensed insurance producers regarding the value of the services provided by licensed insurance producers, the level of expertise and training required of a licensed insurance producer in order to assist consumers in selecting health policies, and the need to allow licensed insurance producers to continue to perform their jobs under the new health benefit exchange.

The committee received testimony from representatives of consumer organizations reminding the committee a broad range of consumers will require a broad range of services to utilize the health benefit exchange, stressing there should be a broad range of entities working as navigators, and stating that the navigator program will play a critical role in education of and outreach to consumers.

The committee received testimony from a representative of the Department of Human Services reminding the committee that since the health benefit exchange will be used to enroll consumers in Medicaid and CHIP, for some consumers there will be a need for navigators to have expertise that goes beyond the services typically offered by licensed insurance producers.

Small Employers

The committee received information that the ACA allows states some flexibility in defining the term "small employer." Until 2016, states can limit the maximum size of a small employer to 50 employees, after which time the states will need to increase the maximum size to 100 employees. The committee received testimony from insurers in support of limiting the state's definition of small group employers to no more than 50 employees because this approach will mitigate concerns regarding the self-funded market entering and exiting the small group market.

Administrative Hearings

The committee considered what administrative hearing process should apply to appeals of insurance certification determinations, whether the law should address the award of attorney's fees for appeals, and whether a hearing officer's order should be final and appealable or should be a recommendation to the agency.

Funding

The committee received information from a representative of the Insurance Department that although HHS has unlimited funding for grants to states to implement the health benefit exchange portion of the ACA, by January 1, 2015, the health benefit exchanges must be self-sustaining.

The committee considered whether the revenues that could be raised by an increase in the insurance premium

tax imposed on health insurers would be adequate to fund all or a portion of the anticipated cost of sustaining the health benefit exchange; whether an increase in insurance premium tax is a desirable funding mechanism; and whether there might be other funding sources that would preferable to increasing premium taxes, such as repealing CHAND and diverting the CHAND assessments to the health benefit exchange.

The committee received information from OMB, Department of Human Services, and Information Technology Department regarding the anticipated costs and FTE positions required to establish and implement the health benefit exchange for the remainder of the biennium.

Technology

The committee received testimony from a representative of the Information Technology Department that the ACA requires the health benefit exchange to provide a coordinated, simple, technology-supported process through which individuals may obtain coverage through Medicaid, CHIP, and health insurance. Although the health benefit exchange is designed to be simple for enrollees on the frontend, it is not a simple process on the backend in the world of technology.

Additional Elements of the ACA

In addition to the ACA requirement for a state health benefit exchange, the ACA also expands Medicaid and requires that insurance companies comply with the ACA external review provisions.

Medicaid Expansion

The committee received the following testimony from representatives of the Department of Human Services regarding Medicaid expansion under the ACA:

- Medicaid expansion effective January 1, 2014, will include a coverage requirement for individuals under age 65 with incomes up to 133 percent of the federal poverty level based on modified adjusted gross income. North Dakota's Medicaid program is expecting up to a 50 percent increase in enrollment because of this expansion. In April 2011 North Dakota's Medicaid enrollment was 64,299. Before January 1, 2014, North Dakota will need to decide if this Medicaid expansion population will receive the current Medicaid services or if the benefit package will be more consistent with the essential health benefits package.
- Extension of Medicaid coverage for foster care children effective January 1, 2014, will provide that all individuals who were in foster care and receiving Medicaid as of the date they turned 18 will continue to be eligible for Medicaid through age 25.
- A required element of the health benefit exchange is that it apply the Medicaid and CHIP eligibility determination and provide for enrollment. In order to achieve this level of interoperability with the health benefit exchange, the Medicaid and CHIP eligibility systems will require significant modifications.

External Review

In July 2011 HHS made a determination that the state's external review law did not meet the minimum federal standards under the ACA. The Insurance Commissioner did not appeal the decision. A representative of the Insurance Department testified 2011 House Bill No. 1127 was prepared by the Insurance Commissioner to satisfy the ACA internal review and external review requirements for health insurance claims. However, that bill was amended and HHS determined this amended version does not comply with the ACA.

The committee received testimony that if the state's external review process had been determined to be effective, the state would be the entity that assisted consumers with their external review process; however, because the process was found not to be effective, consumers must send their external review requests to the federal government.

The committee considered three alternative bill drafts to provide for a state external review process that is intended to meet the ACA standards. The first bill draft essentially would have reintroduced 2011 House Bill No. 1127, as introduced, which appears to have been intended to be an NAIC-parallel process approach. The second and third bill drafts were drafted to be NAIC-similar approaches, with one bill draft directing the Insurance Commissioner to implement the selection of the independent review organization (IRO) and the other bill draft directing the health insurer to implement the selection of the IRO.

The committee received testimony the NAIC-similar process approach bill draft that directs the Insurance Commissioner to implement the selection of the IRO is the ACA-compliant approach to selecting an IRO. Additionally, the committee discussed the legislative history of House Bill No. 1127 and why it was amended during the 2011 regular session.

A representative of the Insurance Department presented information regarding the 16 points that should be met by an external review process in order to be determined to be an NAIC-similar process and how each of the three bill draft rates on each of these points.

The committee received testimony from a representative of the health insurance industry that meeting the federal external review standards is not a hardship. Regardless of what the state law provides, effective January 1, 2014, all policies certified to be sold through the health benefit exchange will have to comply with the federal requirements, i.e., an NAIC-parallel process.

The committee received testimony from a representative of the health insurance industry in opposition to the bill draft based on House Bill No. 1127, as introduced, stating the proposed language goes beyond what is required by the ACA.

RECOMMENDATIONS

The committee recommends House Bill No. 1474 to provide for a state-administered health benefit exchange. The bill draft would:

- Create the North Dakota Health Benefit Exchange Board, which would include four ex officio nonvoting members as well as nine voting members appointed by the Governor. This board would establish the policy for the administration of the health benefit exchange.
- Create the OMB Health Benefit Exchange Division, charged with implementing the policy established by the board and administering the health benefit exchange.
- Require that by January 1, 2013, the exchange be determined by HHS to be ready to begin operations by October 1, 2013, and be fully operational by January 1, 2014. The bill draft provides if the federal implementation deadlines are delayed, the director of OMB may set a later date consistent with the federal deadlines.
- Clarify the health benefit exchange may not duplicate or replace the duties of the Insurance Commissioner or the duties of the executive director of the Department of Human Services relating to the Medicaid and CHIP programs.
- Direct the Department of Human Services to take steps necessary to create and coordinate with the Health Benefit Exchange Division on those portions of the health benefit exchange relating to eligibility determination in the state's Medicaid and CHIP programs.
- Direct state agencies to cooperate with the board, the Health Benefit Exchange Division, and the Department of Human Services to ensure the success of the health benefit exchange.
- Direct the division to adopt rules consistent with the board's conflict of interest policy.
- Direct the board to regularly consult on an ongoing basis with each of the federally recognized tribes located within the state, consult with the Indian Affairs Commission, and invite the executive director of the Indian Affairs Commission to board meetings.
- Direct the board to establish a Health Benefit Exchange Advisory Group and Technical Advisory Group and allow the board to establish any other temporary advisory groups as may be appropriate.
- Direct the board to establish the criteria and procedures for certifying qualified health plans in conformity with and not exceeding the requirements of the ACA.
- Authorize the division to contract with one or more eligible entities to carry out one or more of the functions of the health benefit exchange.
- Provide the health benefit exchange must allow for a health carrier to offer a plan that provides limited scope dental benefits.
- Provide the health benefit exchange shall foster a competitive marketplace for insurance and may not solicit bids, engage in the active purchasing of insurance, or exclude a health benefit plan from the exchange based on a premium price control.
- Prevent the health benefit exchange from precluding the sale of health benefit plans through mechanisms outside the exchange.
- Prevent the health benefit exchange from precluding a qualified individual from enrolling in or a qualified employer from selecting a health plan offered outside the exchange.
- Create a Navigation Office within the Health Benefit Exchange Division which would provide navigator services, provide navigator grants to the Indian Affairs Commission, and regulate who may charge a fee to or otherwise receive consideration to assist consumers in making health coverage decisions through the use of the health benefit exchange.
- Require a separate risk pool for health plans in the individual market and a separate risk pool for health plans in the small group market.
- Provide the health benefit exchange must be self-sustaining by January 1, 2015, and that until such date the division, the Information Technology Department, and Department of Human Services shall use grant funds to finance the establishment of the exchange.
- Direct that before August 1 of each year the division shall submit a proposal to the board outlining how to raise the funds necessary to fund the board, division, and health benefit exchange.
- Direct that before October 1 of each year the board shall establish a plan for funding the board, division, and health benefit exchange.
- Authorize the board to charge assessments or user fees or otherwise generate funding necessary to support the health benefit exchange operations.
- Create the health benefit exchange fund for the deposit of funds to support the board, division, and exchange operations.
- Repeal North Dakota Century Code Chapter 26.1-54, directing the Insurance Commissioner and Department of Human Services to establish a health benefit exchange.
- Direct the Insurance Commissioner, Department of Human Services, and the Information Technology Department to provide regular updates to the Legislative Management regarding the implementation of the Act.
- Provide it is the legislative intent that OMB apply for federal Level 1 and Level 2 exchange establishment grants to fund the health benefit exchange planning activities.
- Provide it is the legislative intent that the division, Information Technology Department, and the Department of Human Services explore grant opportunities that may become available for the health benefit exchange.
- Provide it is the legislative intent that except as expressly authorized, state entities may not use

state funds to fund the planning activities related to the development of and operation of the health benefit exchange.

- Provide a continuing appropriation of federal funds received from federal health insurance exchange grants to the division, Information Technology Department, and Department of Human Services, for the purposes of establishing a state health insurance exchange.
- Provide an appropriation from federal funds to OMB for the purpose of defraying the expenses of establishing and operating the health benefit exchange and authorize nine FTE positions. The federal funding is not subject to the cancellation of unexpended funds provisions of Section 54-44.1-11.
- Provide an appropriation from federal funds to the Information Technology Department for the purposes of defraying the expenses of establishing and implementing the health benefit exchange and authorize 19 FTE positions. The federal funding is not subject to the cancellation of unexpended funds provisions of Section 54-44.1-11.
- Provide an appropriation from money in the health benefit exchange fund to the Health Benefit Exchange Division for the purpose of funding the operation and activities of the Navigation Office.
- Provide the amount remaining from the Insurance Commissioner's $1 million federal grant received for planning for the implementation of a health benefit exchange is transferred to the health benefit exchange fund for use by the Health Benefit Exchange Division, Department of Human Services, or Information Technology Department for the planning, establishing, and administering of the health benefit exchange.
- Provide it is the legislative intent that absent legislative authorization, an executive branch state agency may not enter any agreement with the federal government for the state or federal government to establish, manage, operate, or form a relationship to provide a health benefit exchange under the ACA and provide legislative intent that executive branch agencies may not work with the federal government to evade or otherwise circumvent legislative authority to establish, manage, operate, or form a federally administered or state-administered health benefit exchange.
- Provide the bill draft would become effective November 14, 2011.
- Provide the health benefit exchange law under this Act expires if the ACA is repealed by Congress or otherwise rendered invalid, in whole or in part, by judicial decree or if the state is granted a federal waiver for the health benefit exchange.

The committee also recommends House Bill No. 1475 to provide:

- An appropriation of federal funds received by the Department of Human Services for ACA-related costs of the Department of Human Services and the Information Technology Department relating to incorporating the Medicaid and CHIP eligibility determination functionality into the health benefit exchange and for the purpose of defraying the corresponding costs related to the modification of the department's economic assistance eligibility system, including 1 FTE for the Department of Human Services and 10 FTE positions for the Information Technology Department;
- An appropriation from the general fund and federal funds to the Department of Human Services for the purpose of defraying the expenses of implementation of the ACA's Medicaid expansion provisions, including seven FTE positions for the Department of Human Services; and
- An appropriation of special funds to the Insurance Commissioner for the purpose of defraying the expenses of implementation of the ACA, including four FTE positions.

This bill draft would become effective November 14, 2011.

The committee also recommends House Bill No. 1476 to amend the law relating to the external review procedures required for health insurance policies. The portions addressed by the amendments include clarification of the circumstances under which an external review must be available, expedited external review requirements, notice requirements, allowable filing fees for requesting an external review, and the method by which the Insurance Commissioner shall assign an IRO. This bill draft would become effective December 1, 2011.

SPECIAL SESSION

Legislation

House Bill No. 1474 - Health Benefit Exchange

This bill failed in the House.

House Bill No. 1475 - Appropriation

This bill passed as introduced.

House Bill No. 1476 - External Review Procedure

This bill passed as amended. The amendments clarified the Insurance Commissioner's duty to adopt rules as necessary to ensure the state is in compliance with the federal minimum consumer protection standards.

POST-SPECIAL SESSION

Following the special session, the committee held an additional four committee meetings and that portion of the committee's work is included in this portion of this report.

The committee continued receiving regular status reports from the Insurance Commissioner and representatives of the Insurance Department regarding the federal grants that are available to states to assist in implementation of the health benefit exchanges and the status of other states' implementation of health benefit

exchanges, the essential health benefits requirements under the ACA, and the state's external review procedure.

Additionally, the committee received reports on activities in the state relevant to the committee's study of the state's health care delivery plan.

AFFORDABLE CARE ACT TESTIMONY

External Review Procedure

The Insurance Commissioner testified that on July 10, 2012, the Insurance Department was notified by HHS that the state's external review procedure was determined to meet the standards of the NAIC-parallel process.

Department of Human Services Eligibility Determination System

The committee received status reports from representatives of the Department of Human Services and the Information Technology Department regarding the implementation of the appropriation made to the departments for modification of the economic assistance eligibility system under 2011 Special Session House Bill No. 1475.

Frontier States Amendment

The Frontier States Amendment to the ACA is a provision of the ACA that adjusts Medicare reimbursement for health care providers in states in which at least 50 percent of the state's counties have a population per square mile of fewer than six. The committee was informed the states that qualify as frontier states are North Dakota, South Dakota, Wyoming, Montana, and Nevada.

The committee received testimony regarding the Frontier States Amendment and discussed how the amendment came to be and the impact the amendment is having and will have on the state's health care delivery system. The committee received testimony from medical service providers and facilities in support of retention of the Frontier States Amendment.

Health Benefit Exchange

The committee continued to receive status reports from the Insurance Commissioner regarding steps other states are taking to implement the health benefit exchange provision of the ACA, including grant status and whether the states selected a state-administered, federally administered, or partnership model for the health benefit exchange.

The Insurance Commissioner testified the deadline for states to file a health benefit exchange administration blueprint is November 16, 2012. If a state fails to file a blueprint by the deadline, the default is that the federal government will administer that state's health benefit exchange. Additional health benefit exchange deadlines under the ACA are October 1, 2013--open enrollment begins, January 1, 2014--the health benefit exchanges must be fully operational, and January 1, 2015--the health benefit exchanges must be self-sustaining.

The Insurance Commissioner reported the federal government extended the deadline for health benefit exchange grant applications; however, it is not clear whether the federal government will award grant funds to a state to change from a federally administered to a state-administered health benefit exchange.

The Insurance Commissioner reported the following data published by the Kaiser Family Foundation dated August 1, 2012:

Jurisdiction Status	States and District of Columbia
Established a state-administered health benefit exchange	16
Planning a partnership health benefit exchange	3
Studying options	16
No significant activity	9
Decision to not run a state-administered health benefit exchange	7

The Insurance Commissioner reported North Dakota has joined a NAIC Health Care Reform Regulatory Alternative Working Group, which will:

1. Provide a forum for discussion of the guidance on the alternative to implementing a state-based health benefit exchange and the implications of such alternative on state regulatory authority;
2. Identify and assist states in resolving open issues that need to be addressed with regard to non-state health benefit exchange alternatives;
3. Analyze the impact of the ACA on existing state regulatory authority both inside and outside the health benefit exchange as well as the impact on NAIC model laws; and
4. Identify opportunities for states to continue to innovate and regulate outside of the health benefit exchanges.

The committee considered issues related to funding and funding liabilities, the ability of a state to transition from a federally administered to a state-administered health benefit exchange and vice versa, and whether a federally administered health benefit exchange would negatively impact North Dakota insurers and insurance brokers and dealers.

The committee received testimony from representatives of the insurance industry regarding issues and concerns related to the implementation of the ACA. Representatives of insurers testified there are concerns a federally administered health benefit exchange may begin as an open market model but may evolve into an active purchaser model. A representative of the insurance agent and broker industry testified there are concerns whether the federally administered health benefit exchange will allow agents and brokers to act as navigators and whether the exchange will allow for adequate compensation of the agents and brokers.

The committee received testimony from representatives of medical providers and consumers regarding issues and concerns relating to the implementation of the ACA.

Essential Health Benefits

The committee reviewed the essential health benefits requirements under the ACA. A health insurance issuer that offers health insurance coverage in the individual or small group market must ensure that such coverage includes the essential health benefits package required under the ACA. Initially, it was assumed the federal government would issue a single set of essential health benefits requirements that all states would be required to follow. However, on December 16, 2011, HHS released a bulletin that each state's essential health benefits will be based upon a benchmark plan selected by the state. The HHS bulletin provided that each state may choose a benchmark plan from one of the following four benchmark plan types:

1. The largest plan by enrollment in any of the three largest small group insurance products in the state's small group market;
2. Any of the largest three state employee health benefit plans by enrollment;
3. Any of the largest three national Federal Employees Health Benefits Plan (FEHBP) options by enrollment; or
4. The largest insured commercial non-Medicaid Health Maintenance Organization (HMO) operating in the state.

In addition to the services covered by the state's selected benchmark plan, the state's essential health benefits must include the following 10 categories of services:

1. Ambulatory patient services.
2. Emergency services.
3. Hospitalization.
4. Maternity and newborn care.
5. Mental health and substance use disorder services, including behavioral health treatment.
6. Prescription drugs.
7. Rehabilitative and habilitative services and devices.
8. Laboratory services.
9. Preventive and wellness services and chronic disease management.
10. Pediatric services, including oral and vision care.

If a state fails to choose a benchmark plan by September 30, 2012, the default plan will be the nongrandfathered small group plan with the largest enrollment in the state.

The Insurance Commissioner contracted with a consultant to analyze the essential health benefits choices. The consultant reported the state's benchmark plans are as follows:

1. The largest nongrandfathered small group insurance products in North Dakota's small group market are:
   a. Medica Insurance Company--Medica Choice Passport.
   b. Blue Cross Blue Shield of North Dakota--Classic Blue.
   c. Blue Cross Blue Shield of North Dakota--CompChoice 80.
2. The largest three state employee health benefit plans by enrollment are:
   a. North Dakota PERS - Health care coverage (grandfathered). Plans are issued by Blue Cross Blue Shield of North Dakota.
   b. North Dakota PERS - Health care coverage (nongrandfathered). Plans are issued by Blue Cross Blue Shield of North Dakota.
   c. North Dakota PERS - High-deductible health plan. Plans are issued by Blue Cross Blue Shield of North Dakota.
3. Largest three national FEHBPs:
   a. Blue Cross Blue Shield - Standard option.
   b. Blue Cross Blue Shield - Basic option.
   c. Government Employees Health Association, Inc., benefit plan. The plan is administered by the Government Employees Health Association, Inc.
4. The largest insured commercial non-Medicaid HMO operating in the state--group Sanford Health plan.

The consultant made the following key findings:

- None of the 10 benchmark plans cover all specific benefits within each of the 10 categories.
- Generally, plans comply with North Dakota's mandated benefits, with the exception of the national FEHBPs.
- If any of the three FEHBPs are selected, they will need to be supplemented by certain benefits required by North Dakota's mandates. This will require North Dakota to pay for the costs of these additional benefits.
- The three FEHBPs might be considered as plans providing benefits on a nationwide basis and to a specific subset of the United States population. They may not be the best representation of the specific needs of North Dakota residents.
- Of the 10 benchmark plan choices, 7 are Blue Cross Blue Shield plans.

  Five of the plans are issued by Blue Cross Blue Shield of North Dakota or, in the case of two FEHBPs, are sponsored and administered by the Blue Cross Blue Shield Association.

  For these seven plans, there are few variations among the benefits provided (with the possible exception of the two FEHBPs).
- The Sanford Health HMO plan appears to provide fewer benefits than the other nine plans.
- The Department of Health and Human Services may or may not require coverage for specific benefits in its final rule. It appears the two small group insurance products issued by Blue Cross Blue Shield of North Dakota would require the fewest benefit additions.
- By choosing a plan already covering significant numbers of North Dakota residents, there may be fewer problems associated with providing an adequate number of in-network primary care and specialty physicians.

The Insurance Commissioner testified the federal government is expecting North Dakota and the other states to make an essential health benefits benchmark

plan selection without having received the final regulatory guidelines from HHS. North Dakota is faced with deciding whether to select a benchmark plan that is relatively basic--providing a floor on which insurers can build--or select a benchmark plan that is relatively rich--ensuring all consumers have a more extensive set of benefits.

The Insurance Commissioner raised the following potential decision implications related to essential health benefits:

- States may choose any plan in the benchmark options. Some of these plans are considered more basic in the coverage of benefits and others richer. All of the North Dakota benchmark choice plans will require additional benefits to be added to meet the 10 required categories and all must be modified to take out the dollar limits on the existing benefits.
- Specific coverage that is included in specific plans may cause a plan to be more or less expensive as it relates to the premium cost of that particular coverage, i.e., coverage for certain fertility benefits with no dollar limitations is a more expensive benefit to add to plans than certain laboratory services without dollar limitations.
- Given that all nongrandfathered small group and individual plans must include the essential health benefits after 2014, this set of benefits is often thought of as a floor. Insurers may add to those benefits in any way they like and price the products accordingly, but they may not take benefits away.
- The impacts of choosing a basic plan versus a rich plan are various and include potential premium pricing increases, premium value as it compares to the necessity of specific coverage, market disruption, insurer competition, network adequacy, and provider payments.
- Choosing a richer plan, especially given no dollar limitations, most likely will cause most existing insurers to request higher premium rate increases due to the additional benefits likely to be paid. Affordability becomes a serious concern for policyholders.
- Some policyholders may want to know most benefits are covered by their plans, thereby wanting a rich plan. Choosing a richer plan may force employers and individuals to purchase insurance they do not want or need.
- Choosing a basic plan in a state like North Dakota where most of the existing small group and individual plans have traditionally been fairly rich may cause market disruption. Small employers may terminate previous, richer plans especially if the more basic plans cost less. This may leave employees with far fewer benefits than previously or without an employer-sponsored plan at all.
- A perceived positive impact of choosing a basic plan is insurers will be allowed to design plans in a unique way to compete against other insurers by adding select benefits that distinguish one plan from another. This will also allow for better variation when employers and individuals shop for insurance whether inside or outside the health benefit exchange.
- Certain areas of the state may not have adequate provider networks for all benefits in a rich plan. Just because the benefit is covered does not mean every policyholder will be able to take advantage of that coverage easily.
- Providers are likely to want more benefits covered instead of fewer because insurance is a better payer than an individual who has to pay for the individual's own services, Medicaid, or Medicare.
- There are likely more potential positive and negative impacts of the various essential health benefits benchmark choices specific to unique groups of consumers, employers, and insurers.

The consultant informed the committee that the data indicates if the state does not take any action to select an essential health benefits benchmark plan, the default plan will be the Medica Choice Passport plan--the largest nongrandfathered small group insurance product in the state's small group market. The consultant's report indicated this plan is a more benefit-rich plan than the other benchmark plans and all the benchmark plans except for the FEHBPs include the state's health coverage mandates.

Insurers questioned how the ACA will address coverage in a benchmark plan that provides for a payment cap or other such lifetime limit on the dollar value of benefits for services such as substance abuse treatment or fertility treatment. Federal guidelines are not clear whether an insurer will be allowed to implement an actuarial equivalent in the policy because policies will not be allowed to have lifetime caps.

The committee considered how the state's essential health benefits would be impacted if the state modified or added another health insurance mandate, such as revising the temporomandibular joint disorder coverage law. The committee received testimony that if the state adds additional health coverage mandates to the state's essential health benefits, the ACA will require the state to defray the cost of those mandated benefits in excess of the essential health benefits.

An insurer raised the point that although the consultant's report is complete as it relates to benefits, it is incomplete as the report failed to address pricing of the different benchmark plans and cost/utilization data. Additionally, the report did not address cost shifting.

The committee discussed the relationship between the selection of the essential health benefits plan and the dollar amount of the subsidies a consumer may be eligible to receive. Testimony indicated the amount of a subsidy in a state will be based on the second lowest silver plan offered on the health benefit exchange; therefore, it is expected the more basic the essential health benefits and therefore the lower the cost of the policy, the lower the amount of subsidy available. The inverse will be true if the essential health benefits are richer and therefore the policies are more expensive.

The committee considered the benefits of selecting an essential health benefits plan that is similar to the benefits offered through the state's Medicaid plan, in

order to minimize negative incentives to remain on Medicaid and to address the issues that arise when consumers transition between Medicaid and the private market.

The committee weighed the pros and cons of selecting a benchmark plan that is benefit rich, verses benefit poor, verses in the middle. Additionally, the committee considered the benefit of selecting a benchmark plan that is most similar to the plan held by the largest number of North Dakotans.

Supreme Court Decision

The committee reviewed the June 29, 2012, ruling of the United States Supreme Court in *NFIB v. Sebelius*, regarding the constitutionality of the ACA. The following table summarizes the issues addressed by the Court, the decisions, and the positions taken by the nine members of the Court:

Issue	Decision	Majority/Concur	Dissent
Whether the Court had jurisdiction to hear the challenge under the federal Anti-Injunction Act	Yes (5-4-0)	Chief Justice Roberts and Justices Ginsburg, Breyer, Sotomayor, and Kagan (Individual mandate is a penalty instead of a tax under the Anti-Injunction Act.) Justices Scalia, Kennedy, Thomas, and Alito (Mandate is not a tax.)	
Whether the individual mandate is a valid exercise of Congress's power under the Commerce Clause (Article I, Section 8, Clause 3)	No (1-4-1-4)	Chief Justice Roberts (Power does not extend to regulation of economic inactivity.) Justices Scalia, Kennedy, Thomas, and Alito Justice Thomas (Commerce Clause powers have grown too broad.)	Justices Ginsburg, Breyer, Sotomayor, and Kagan
Whether the individual mandate is a valid exercise of Congress's power under the Necessary and Proper Clause (Article I, Section 8, Clause 18)	No (5-4)	Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, and Alito	Justices Ginsburg, Breyer, Sotomayor, and Kagan
Whether the tax penalty for not obtaining insurance can be upheld under the taxing and spending power (Article I, Section 8, Clause 1)	Yes (5-4)	Chief Justice Roberts and Justices Ginsburg, Breyer, Sotomayor, and Kagan	Justices Scalia, Kennedy, Thomas, and Alito (disagree with classifying individual mandate as a tax rather than a penalty)
Whether the Medicaid expansion is a valid exercise of the spending power or instead is unconstitutionally coercive	Coercive (3-2-4) Upheld Medicaid expansion as a voluntary provision. Federal government may not penalize a state for not participating by withholding all Medicaid funding.	Chief Justice Roberts and Justices Breyer and Kagan (States must be allowed to opt-out.) Justices Ginsburg and Sotomayor (concurred in part) Justices Scalia, Kennedy, Thomas, and Alito (concurred in part)	Justices Ginsburg and Sotomayor (dissented in part - would have upheld under the Spending Clause) Justices Scalia, Kennedy, Thomas, and Alito (dissented in part - would have struck down entire Medicaid expansion)

Medicaid

In *NFIB v. Sebelius,* the United States Supreme Court upheld the ACA's 2014 Medicaid expansion; however, the Court struck down the mandate that directed the federal government to withhold all federal Medicaid funding if a state chooses to not expand Medicaid. Therefore, the decision about whether to expand the Medicaid program will be left to each state.

A representative of the Department of Human Services testified the issues related to Medicaid expansion which arise as a result of the Court's decision can be addressed during the 2013 regular legislative session. The department plans to provide the Legislative Assembly with the information necessary to make decisions regarding whether the state should expand the state's Medicaid program or keep the program at its current levels or whether there may be other options available to the state.

The committee received testimony that the Department of Human Services is in the process of gathering information and seeking clarification from the federal government regarding the Medicaid expansion topic. However, regardless of whether the state expands its Medicaid program, the ACA provides for several changes to the state's Medicaid program, including provider enrollment and screening, termination of provider participation, recovery audit contractor requirements, increases in physician reimbursement, maintenance of effort provisions, and the transition to modified adjusted gross income (MAGI).

The committee received testimony from a representative of the Department of Human Services that regardless of whether the state ultimately decides to expand its Medicaid program, it is expected that implementation of the ACA will result in an increase in the state's Medicaid enrollment due to a variety of factors, including the individual mandate and increased outreach to find those individuals who may currently be eligible but do not realize they are eligible.

Comprehensive Health Association of North Dakota

The Comprehensive Health Association of North Dakota (CHAND) is the state's high-risk pool. Blue Cross Blue Shield of North Dakota administers the CHAND program for the CHAND Board.

Beginning on January 1, 2014, the federal high-risk pool will cease functioning and all eligible health insurance coverage will be guaranteed issue. Therefore, individuals will not be denied coverage and be forced to go to a high-risk product such as CHAND. High-risk products such as CHAND do not have to comply with provisions of the ACA, and as a result, CHAND does not have to comply with the essential health benefits and other provisions of the ACA.

The committee received testimony that once all provisions of the ACA go into effect in 2014, it is expected that health insurance premiums will increase significantly; however, with the subsidies available within the exchange it does not necessarily mean that each person's net premium will increase dramatically. With these expected increases and with the lesser benefits within CHAND, it is possible that the cost of a CHAND premium may be lower than that offered within the health benefit exchange. With the full implementation of the ACA in 2014, there will be no new applicant who will be eligible for enrollment into CHAND as a "traditional applicant" or as a "HIPAA applicant" because people will no longer be rejected or denied coverage in the traditional market. It is very probable that traditional CHAND members will elect to apply for products within the health benefit exchange so they can get more benefits and be eligible for individual subsidies. As a result, it is expected that enrollment within CHAND will decrease significantly. However, there are classes of CHAND applicants, such as Trade Adjustment Assistance Reform Act of 2002 (TAARA) applicants and Medicare supplement applicants, who are not addressed under the ACA.

A representative of Blue Cross Blue Shield of North Dakota posed the following considerations:

- Should all current CHAND "traditional" and "HIPAA" members be transitioned to other coverage within the exchange in 2014, and if not, will the cost for those members who remain be so costly that maintaining CHAND for that group could be prohibitive;
- If the "traditional" and "HIPAA" CHAND products are maintained, how should the assessments be done;
- Should the Medicare supplement-like product and the TAARA product be maintained, and how should the assessments be established; and
- If the "traditional" and "HIPAA" CHAND programs are eliminated, what date should be established for this change.

The Insurance Commissioner recommended the Legislative Assembly wait for the United States Supreme Court decision in *NFIB v. Sebelius*, the fall elections, and the 2014 implementation of the ACA and then evaluate CHAND enrollment to determine what changes may be appropriate.

AFFORDABLE CARE ACT - CONSIDERATIONS AND RECOMMENDATION

Considerations

The committee considered its options of how to address the ACA deadlines of September 30, 2012, for selecting an essential health benefit benchmark plan and November 16, 2012, for filing a health benefit exchange blueprint.

The committee reviewed the constitutional and statutory powers of the executive branch and the legislative branch as this authority relates to whether a member of the executive branch, such as the Governor or the Insurance Commissioner, has authority under state law or the state's constitution to notify the federal government and make a decision relating to selection of a benchmark plan for essential health benefits and to file a blueprint for the health benefit exchange.

The committee discussed the options of limiting its actions to committee discussion; communicating a formal statement of the committee expressing policy, which would need to be preapproved by the Legislative Management Chairman; recommending a joint resolution, which absent a special session would not be introduced until the 2013 regular session; and recommending a bill draft, which absent a special session would not be introduced until the 2013 regular session.

The Insurance Commissioner recognized that historically, the selection of the essential health benefits benchmark plan would be a legislative function; however, due to the September 30, 2012, deadline for notifying HHS, the Insurance Commissioner may be faced with the role of selecting the benchmark plan.

The committee members discussed pros and cons of each of the benchmark options. The committee did not take action regarding selection of an essential health benefits benchmark plan.

Recommendation

The committee recommends House Bill No. 1034 to provide for a Legislative Management study of health care reform options. As part of this study, the Insurance Commissioner, Department of Human Services, and State Department of Health are to provide status reports on the state of health insurance and health-related public assistance.

STATE HEALTH CARE DELIVERY PLAN STUDY TESTIMONY

Health Care Trends in Oil Country

The committee held panel discussions of interested parties to discuss health care delivery issues related to the development of the oilfield.

The committee received testimony that issues the medical community and the long-term care community are facing include workforce recruitment and retention and housing shortages for the workforce and for seniors. In addition to facing the naturally occurring aging of the workforce, the medical community in the oilfield also has to deal with the next generation not filling these opening positions, in part due to higher wages available in the community.

The committee was informed that another issue the medical community is facing in the oilfield is the self-limiting nature of the current clinic space. The clinics are at maximum capacity and are unable to increase patient services because there is physically no more space. One consequence of the full clinics is the increased use of emergency rooms and the associated higher costs of emergency room visits. Additionally, the medical community is facing increases in communicable diseases, increases in bad debt, and unmet day care needs for the workforce.

A representative of the North Dakota Hospital Association stated the organization has taken on this issue of helping the hospitals form partnerships. However, it is more than just a hospital issue; therefore, the initiative has expanded its participants and has expanded beyond western North Dakota. The health care communities in Bismarck and Minot are also being impacted by the oilfield development.

Wellness

The State Health Officer testified regarding the state's current model for health care delivery and alternative health care delivery models. In order to improve the general health of the population and help mitigate rapidly rising costs of health care, it will be necessary to balance and coordinate the following three sets of tools:

1. Adequate policies at the state, local, and organizational levels;
2. Population-based programs of public health; and
3. A reorientation of current clinical services to emphasize primary care.

The State Health Officer's testimony focused on:

- Promoting a wellness-oriented system instead of focusing on care for illnesses;
- Encouraging primary care and a medical home, including shifting the orientation of the health care systems from disease to wellness, better incentivizing outcome versus fee for services, and supporting a better balance of primary care to specialties;
- Encouraging community engagement and worksite wellness, with an initial focus on workplaces and schools; and
- Expansion of the role of paramedics as mid-level practitioners, particularly in rural communities.

The State Health Officer testified the state may need to consider how to enhance its focus on wellness, outcomes, and enhanced primary care. A community engagement program to facilitate comprehensive wellness in worksites and schools would be helpful. Additional clinical tools to support worksite and school wellness, as well as general community wellness particularly in rural areas, could include chronic disease management programs, case management, a statewide call-a-nurse system, and increased use of mid-level practitioners across the state to provide clinical support services in collaboration with current health systems.

Third Street Clinic

The committee received an overview of the medical services provided through Third Street Clinic, Grand Forks. A representative of Third Street Clinic testified it is unknown what impact full implementation of the ACA will have on the organization. If the ACA results in the medical needs of the community being met, that is a great thing; however, historically Third Street Clinic has evolved to meet the unmet needs of the community, and unmet needs may include expansion of services to address drug and alcohol issues.

Community Health Centers

The committee received an overview of how community health centers operate in the state. A community health center is a nonprofit entity that exists in areas where health care is scarce. Community health centers are governed by county boards and North Dakota has five community health center sites--Migrant Health Services, Fargo Family Health Center, Valley Community Health Center, Coal County Community Health Center, and Northland Community Health Center.

The committee received testimony that approximately 31 percent of the North Dakota community health centers patients are uninsured. Under the ACA, community health centers received funds to expand the program. The ACA provision relating to community health centers has the potential to add 20 million new community health centers patients nationwide.

Bridging the Dental Gap

The committee received an overview of the dental services provided through Bridging the Dental Gap. The committee was informed that although the number of dentists in the Bismarck-Mandan area has increased since 2005, there has also been an increase in population.

MediQHome

The committee received an overview of the MediQHome program offered through Blue Cross Blue Shield of North Dakota. The program provides for a patient-centered medical home approach, an adaptable technology platform, and an innovative reimbursement model with the goal of addressing chronic conditions and prevention, such as the chronic conditions asthma, attention deficit hyperactivity disorder, chronic heart failure, coronary artery disease, diabetes, and hypertension, and prevention services, such as breast

cancer screening, cervical cancer screening, colorectal cancer screening, and immunizations. The MediQHome program has realized a $3 return on every $1 spent under the program.

The testimony described the MediQHome approach as a different approach from the traditional approach under which copayment amounts and deductible amounts are increasing. The focus under the MediQHome program is to focus on getting people to the doctor's office for preventative care and to keep those people healthy. Under the program, the number of office visits typically increases but the number of inpatient admissions typically decreases, resulting in healthier patients and lower institutional costs.

A physician participating in the MediQHome program testified the health care delivery system needs to change its focus from payment for office visits to payment for health and wellness. A multifaceted approach may include addressing diet, activity, education, and patient followup.

The potential impact and opportunities for the state using the MediQHome program may include implementation with the Medicaid and Medicare populations.

PERS

The committee received testimony regarding the feasibility of enrolling the state's uninsured in the public employee health plan.

Prescription Drug Issues

The committee received testimony regarding ways the state's health care delivery system could be improved as it relates to prescription drug issues.

The committee received testimony regarding the state's prescription drug monitoring program and issues related to prescription of controlled substances from representatives of the State Board of Pharmacy, State Board of Medical Examiners, North Dakota Medical Association, Bureau of Criminal Investigation, Blue Cross Blue Shield of North Dakota, the Department of Human Services, and Workforce Safety and Insurance.

The committee received an overview and status report on implementation of the prescription drug monitoring program. The purpose of the program is to collect data on all Schedules II, III, IV, and V controlled substances dispensed in the state or for patients residing in the state. The prescription drug monitoring program is currently funded through the reserves of the State Board of Pharmacy, but the board plans to bring forward legislation during the 2013 session to implement a controlled substance registration, which would be the long-term funding mechanism for the prescription drug monitoring program.

Data indicates approximately 25 percent of the state's prescribers have used the prescription drug monitoring program at least once. However, this data does not mean 25 percent of the state's prescribers consistently or regularly use the program.

A representative of the State Board of Medical Examiners testified the board frequently uses the prescription drug monitoring program in prosecuting prescription cases, and the board is looking at a number of ways to address prescribing issues, including development of standard of care guidelines that would be used by the board to determine if a physician is properly using the prescription drug monitoring program in the prescribing of controlled substances.

A representative of the North Dakota Medical Association testified that at the association's upcoming annual meeting, affirmative acts will be taken to enroll doctors for the prescription drug monitoring program.

The committee received testimony from the professional community that in considering how best to use the prescription drug monitoring program, it is important to keep in mind that if prescribers are faced with too many barriers when prescribing opioids, they may decide to stop prescribing them entirely and this is problematic. Under the current system, patients are already forced to travel for pain management care, resulting in the unintended consequence of the prescriber being unfamiliar with the patients. It is important to not add to this existing problem.

Charity Care and Bad Debt

The committee received testimony regarding the general issue of bad debt and charity care for medical services. Testimony indicated that in the Fargo area, until recently, the amount of bad debt the facilities were experiencing remained relatively steady while nationwide the amount was experiencing significant increases. However, recently, the providers in the Fargo area have experienced an increase in bad debt. The reasons for bad debt are multifaceted, including the number of underinsured who have high deductible policies. The bad debt in clinics has been increasing more than it has been in the hospital setting. Although there has not been an increase in the frequency of bankruptcies, due in large part to the new bankruptcy rules that make it more difficult to discharge debt, there has been an increase in the number of requests the facilities are seeing to turn the debt into bad debt.

The committee considered what impact the ACA and the individual mandate may have on charity care and bad debt.

STATE HEALTH CARE DELIVERY PLAN - RECOMMENDATION

The committee recommendation is addressed under **AFFORDABLE CARE ACT - CONSIDERATIONS AND RECOMMENDATION**.

HEALTH SERVICES COMMITTEE

The Health Services Committee was assigned the following responsibilities:

1. Section 8 of House Bill No. 1004 (2011) directed a study of the regional public health network pilot project during the 2009-11 biennium, including services provided, effects of the project on participating local public health units, efficiencies achieved in providing services, cost-savings to state and local governments, and possible improvements to the program.
2. Senate Concurrent Resolution No. 4012 (2011) directed a study of the feasibility and desirability of placing the entire Fort Berthold Reservation in a single public health unit.
3. Section 3 of House Bill No. 1152 (2011) directed a study of the future of health care delivery in the state. The study was to focus on the delivery of health care in rural areas of the state and include input from the University of North Dakota (UND) School of Medicine and Health Sciences Center for Rural Health, hospitals, and the medical community.
4. Section 23 of House Bill No. 1003 (2011) directed a study of the ability of the School of Medicine to meet the health care needs of the state. The study was to include a review of the health care needs of the state, options to address the health care needs of the state, and the feasibility and desirability of expanding the School of Medicine to meet the health care needs of the state.
5. 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.
6. The Legislative Management also assigned the committee the responsibility to receive:
   a. A report from the State Fire Marshal regarding findings and recommendations for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes.
   b. Reports from the State Department of Health before January 1, 2012, April 1, 2012, and July 1, 2012, regarding the department's inventory of material relating to abortions and outlining the department's practice of gathering the inventory items.
   c. A report from the Health Council by July 1, 2012, regarding the findings of its review of current health care bed recommendations and whether changes should be made to better serve the population of North Dakota.

Committee members were Senators Judy Lee (Chairman), Spencer D. Berry, Ralph L. Kilzer, Tim Mathern, Gerald Uglem, and John Warner and Representatives Stacey Dahl, Kathy Hogan, Karen Karls, Robert Kilichowski, Jon Nelson, Mark S. Owens, Vonnie Pietsch, Karen M. Rohr, Mark Sanford, and Robin Weisz.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

REGIONAL PUBLIC HEALTH NETWORK PILOT PROJECT STUDY

Section 8 of House Bill No. 1004 directed a study of the regional public health network pilot project conducted during the 2009-11 biennium. The study was to include an assessment of the regional public health network pilot project, including services provided, effects of the project on participating local public health units, efficiencies achieved in providing services, cost-savings to state and local governments, and possible improvements to the program.

Background

The committee reviewed previous studies relating to public health units in the state, including studies by the 2003-04 Emergency Services Committee of the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues; and the 2005-06 Budget Committee on Human Services of the state's public health unit infrastructure and the ability of the public health units to respond to public health issues.

The committee received information on legislative action relating to public health units and services provided by public health units. The committee learned the Legislative Assembly in 1999 required all land in the state must be in a public health unit by January 1, 2001, and as a result, 28 public health units have been established. State law does not mandate any minimum requirements or establish any expectations of services for public health units. The public health units take a variety of forms and include 7 multicounty health districts, 11 single county health districts, 3 city/county health departments, 1 city/county health district, and 6 single county health departments. Chapter 23-35 includes provisions relating to establishing public health units, including the establishment of multicounty or city/county health districts and authority for health districts to merge into a single health district. The western part of the state consists primarily of multicounty health districts, while the eastern part of the state consists mostly of single county health districts and departments. Chapter 54-40.3 allows public health units to enter joint powers agreements with other public health units upon approval of each governing body to provide

shared services. A public health district has a separate governing board, while a public health department is an agency within a city or county government.

Local public health units are required to meet state standards and follow state laws and regulations but have the authority to determine service area and jurisdiction. The most common services provided include immunizations (adult and child), tobacco prevention, blood pressure screening, injury prevention screening, blood lead screening, and the child health component of Medicaid.

In 2002 when the emergency preparedness and response program began, local public health unit administrators developed eight public health planning regions around the eight most-populated cities in the state. The health unit whose jurisdiction covers the largest city in each region has been designated as the lead health unit for that region. Public health emergency preparedness funding from the Centers for Disease Control and Prevention (CDC) provides for 2.5 employees in each lead local public health unit to assist with health and medical planning and preparedness activities with the stakeholders in the region.

The Centers for Disease Control and Prevention has regional arrangements with local public health units regarding infectious and communicable disease surveillance and investigations. In this arrangement, the state is divided into eight field epidemiology areas, and each field epidemiologist has an office in the lead local public health unit in each region. Although the lead local public health unit location corresponds to the emergency preparedness and response-defined lead health units, the field epidemiologist coverage areas are not the same as the emergency preparedness and response regional geographic boundaries.

Local public health units and other partners across the state contract with the Community Health Section of the State Department of Health to provide services in cancer prevention and control, chronic disease, family health, injury prevention and control, and nutrition and physical activity.

The following six core public health activities are a national standard for public health:

1. Preventing epidemics and the spread of disease;
2. Protecting against environmental hazards;
3. Preventing injuries;
4. Promoting health behaviors;
5. Responding to disasters; and
6. Assuring the quality and accessibility of health services.

Each of the core functions includes essential services that provide the framework for measuring and improving public health practice. According to the American Public Health Association, the following 10 essential public health services should be provided to citizens by the public health system:

1. Monitor health status to identify community health problems.
2. Diagnose and investigate health problems and health hazards in the community.
3. Inform, educate, and empower people about health issues.
4. Mobilize community partnerships to identify and solve health problems.
5. Develop policies and plans that support individual and community health efforts.
6. Enforce laws and regulations that protect health and ensure safety.
7. Link people to needed personal health services and assure the provision of health care when otherwise unavailable.
8. Assure a competent public health and personal health care workforce.
9. Evaluate effectiveness, accessibility, and quality of personal-based and population-based health services.
10. Research new insights and innovative solutions to health problems.

State grants to local public health units are distributed to each unit pursuant to a formula developed by the State Department of Health. The department currently provides $400,000--$50,000 per unit--to the eight lead health units to provide regional environmental health services during the biennium. The remaining funds are distributed through a formula that provides each public health unit with a $6,000 base allotment per biennium with the remainder of the funding being distributed on a per capita basis.

A county may allocate funding not exceeding the amount raised by levying up to five mills to support public health units, and in addition to the local tax funding, public health units receive state and federal grants and fees collected for services. Because funding levels and service areas vary for the 28 public health units, the services provided by public health units also vary.

Regional Public Health Pilot Project

Legislative Action

The Legislative Assembly in 2009 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 are required to 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 department for a regional public health network pilot project during the 2009-11 biennium.

The 2011-13 executive recommendation for the State Department of Health in House Bill No. 1004 included $275,000 of one-time funding from the general fund to establish joint powers agreements to form another regional public health unit during the 2011-13 biennium. In addition, the executive recommendation included $2.4 million from the general fund for grants to local public health units. The Legislative Assembly increased funding from the general fund for grants to local public health units by $600,000 to provide a total of $3 million from the general fund, removed the one-time funding included in the executive budget to establish another

regional public health network, and provided for a study of the regional public health unit pilot program conducted during the 2009-11 biennium.

Project Summary

Pursuant to Section 2 of Senate Bill No. 2333 (2009), the State Health Officer appointed the Regional Public Health Network Task Force to develop criteria and prepare a grant document for the regional public health network pilot project. 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.

The regional public health network must consist of newly formed relationships within the emergency preparedness region in order to be eligible for the grant, and a multicounty health district comprising an entire emergency preparedness region was not eligible. Each regional public health network was to 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. Proposals were received from two regions--Southeast Central with Central Valley Health District in Jamestown being the lead health unit and Southwest Central with Bismarck/Burleigh Health Department being the lead health unit. 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 for the 2009-11 biennium. The participating health units were:

- Central Valley Health District - Jamestown;
- City-County Health District - Valley City;
- LaMoure County Public Health Department - LaMoure; and
- Wells County District Health Unit - Fessenden.

The committee learned the pilot network established a joint powers agreement in July 2010 to share family planning, sexual assault response, chronic disease management, and immunization 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. 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 committee learned the entire $275,000 appropriated for the regional public health network pilot project was spent during the 2009-11 biennium with 76 percent of the funding spent on personnel.

Effect on Participating Public Health Units

The committee received information on the effect of the pilot project on the participating public health units. The committee learned research suggests local infrastructure and protection of the public's health is improved through regionalization, especially in regions with populations under 50,000. The total population of the counties participating in the regional public health network pilot project is 41,102.

The committee learned the pilot project was a collaborative effort, and each participant was provided equal representation and participated in the decisions of the network.

The regional public health network pilot project allowed Central Valley Health District to:

- Improve the environmental health program in the region;
- Improve collection processes;
- Compile a community assessment document for use in grant writing;
- Observe services provided by other local public health units; and
- Forge relationships with regional public health partners.

The hardware, software, and training brought to the Wells County District Health Unit by being part of the project increased its professionalism. Efficiencies were gained by implementing an electronic billing system and web-based time management system and by replacing a dial-up system used for Medicaid, Medicare, and Blue Cross Blue Shield. Adopting Central Valley Health District's online policies improved the operating policies of the Wells County District Health Unit, and a contract for environmental health services with the Central Valley Health District increased and improved environmental health services. Environmental health services did not exist in Wells County prior to the project and with the assistance of Central Valley Health District, the Wells County District Health Unit established public health ordinances.

The regional public health network pilot project resulted in the LaMoure County Public Health Department realizing efficiencies that have maximized

the department's ability to provide efficient, quality public health services in LaMoure County.

Evaluation

The committee received a report regarding an evaluation of the regional public health network pilot project. The report identified the following efficiencies and benefits of the pilot project:

- Business process improvement;
- Uniform client charting and documentation;
- Nursing policy and procedure framework website for sharing and support;
- Expense-monitoring improvements;
- Higher security for client information and improvements in Health Insurance Portability and Accountability Act compliance;
- Annual report efficiencies and data enhancements;
- Credible relationship building to aid in future collaborative projects;
- Improvements in standards of care--specifically chronic disease management;
- Professionalism of staff and process improvements;
- Availability of expertise and training;
- Level of trust between participating agencies; and
- Comprehensive health assessment and community health improvement planning.

The report indicated cost-savings were realized on the purchase, training, and implementation of the billing system software. The committee learned the network arrangement saved $15,000 on the purchase of the billing system software, and savings on training provided by the Central Valley Health District ranged from $4,147 to $11,429 depending on training arrangements. The committee learned training and the implementation of the billing and time management systems resulted in $22,000 of additional revenue, and clients served increased from 300 to over 1,100 in LaMoure County.

The report identified the following major challenges of the pilot project:

- The need for continuing education to fully utilize the electronic billing system;
- Lack of time to manage and maintain the website;
- Lack of adequate realized savings to increase or share services;
- The need for regional accreditation for participating agencies;
- The need for improvements to environmental health tracking;
- The lack of community assessment information for each community; and
- Differing geographic boundaries for emergency preparedness, human services, and public health departments/districts.

The committee received comments from representatives involved in the pilot project and learned regional public health networks could be used to provide more consistent services statewide by:

- Modeling services based on a national standardization framework, such as accreditation and the 10 essential public health services;
- Building networks and relationships;
- Focusing on planning and community assessment as a guide to meet the needs of the community;
- Dedicating state aid to the establishment of regional networks;
- Requiring networks to include quality improvement methods in the delivery or activity plan;
- Allowing for adequate planning time; and
- Adding a requirement for networks to submit an annual expense report to the State Health Officer.

Proposed Changes

The committee learned the North Dakota State Association of City and County Health Officials organized a task force to develop recommendations relating to the regional public health network. The task force suggested the Legislative Assembly:

1. Allow more flexibility by removing the list of shared services, but require networks to create a workplan that includes activities based on the core public health activities. The change would provide structure but allow for flexibility in how the core services are provided;
2. Remove the geographic region requirement to allow local public health units with existing working relationships to form a network;
3. Provide that regional public health networks serve a minimum population of 15,000 or include at least three local public health units; and
4. Remove the requirement for the network to have a regional network health officer. The committee learned network participants select a governing body to provide oversight regarding the activities in the joint powers agreement, but there has been confusion regarding the authority of the local public health unit director and the regional network health officer.

Other Information and Testimony

The committee received additional information and testimony relating to the regional public health pilot project, including:

- Collaboration is continuing among the public health units involved in the pilot project. Changes made to processes as a result of the pilot project will be ongoing.
- In August 2010 a joint powers agreement formed the North Dakota State Association of City and County Health Officials--a state association for North Dakota local public health units. The committee learned similar associations have been formed in other states to streamline communications between state and local public health agencies and to receive current information on national public health initiatives, including quality improvement and public health accreditation. The purpose of the association is to improve coordination of local public health

department efforts across the state, enhance consistent messaging and education, improve training and advocacy, and share best practices. The association is governed by a 10-member executive committee with representatives from local public health units, the State Department of Health, and the North Dakota Association of Counties.

- Local public health units in areas of the state impacted by oil activity are already multicounty health districts and collaborate as necessary. Those local public health units could benefit from regional public health network funding to expand collaborations and services.
- Rolette County and Dickey County boards have expressed interest in establishing a regional network, but additional funding would be needed to participate. There is also interest in a regional public health network in the southeast, including Ransom, Richland, Sargent, and Steele Counties and Traill District with Fargo Cass Public Health as the lead health unit.
- Expanding and sharing services at local public health units is not feasible without fiscal support. Some counties have had difficulty raising adequate funds from their five-mill property tax limit. State fiscal support of the regional network is needed to reimburse the lead health unit for administrative costs relating to establishing the network and for ongoing coordination. Ongoing support is needed to meet the regional public health network goal of expanding services in the smaller units and providing more equitable care statewide.

Recommendation

The committee recommends Senate Bill No. 2030 to amend Chapter 23-35.1 relating to regional public health networks. The bill removes the requirement that participating local public health units share administrative functions, provides that any joint powers agreement include core activities rather than specific types of services, and includes outcome measures for the regional public health network program. The bill appropriates $4 million from the general fund to the State Department of Health to establish, administer, and operate regional public health networks in the state.

STUDY OF THE FEASIBILITY OF PLACING THE FORT BERTHOLD RESERVATION IN A SINGLE PUBLIC HEALTH UNIT

Senate Concurrent Resolution No. 4012 directed a study of the feasibility and desirability of placing the entire Fort Berthold Reservation in a single public health unit.

Background

The committee reviewed previous interim studies relating to the state's public health units, including studies by the 1997-98 Insurance and Health Care Committee regarding the development of a strategic planning process for the future of public health in the state and the 2003-04 Emergency Services Committee and the 2005-06 Budget Committee on Human Services regarding the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues.

The 2005-06 Budget Committee on Human Services heard reports from a number of public health units across the state regarding the services and funding of each unit and suggestions for improving public health services in the state. Concern was expressed by representatives of certain health units that counties with tribal lands are unable to generate adequate county funding because tribal lands are not subject to property taxes and the statutory mill levy for public health is limited to five mills, which does not allow adequate funding to be raised at the local level.

The committee received information regarding public health structure. Chapter 23-35 includes provisions relating to establishing public health units, including the establishment of multicounty or city/county health districts and authority for health districts to merge into a single health district. Chapter 54-40.3 allows public health units to enter joint powers agreements with other public health units upon approval of each governing body to provide shared services. The committee learned a public health district has a separate governing board, while a public health department is an agency within a city or county government. The committee learned expansion, merger, or dissolution of health units is allowed by county areas, but there is no provision for subcounty areas to be included or excluded from districts.

The committee learned, unlike the other three reservations in North Dakota which are each contained in a single local public health unit, Fort Berthold is served by four local public health units. Local public health units containing reservations include:

- Custer Health Unit--Standing Rock Reservation;
- Lake Region District Health Unit--Spirit Lake Reservation; and
- Rolette County Public Health District--Turtle Mountain Reservation.

The Fort Berthold Reservation is served by four health units--First District Health (Minot), Upper Missouri District Health (Williston), Custer Health (Mandan), and Southwestern District Health (Dickinson).

The committee learned the Fort Berthold Reservation is part of the Aberdeen, South Dakota, Service Area of the Indian Health Service (IHS). The 2010 census indicated 6,341 people live on the Fort Berthold Reservation, of which 4,556 are Native American. The committee learned the number of nontribal members continues to increase as the oil and gas industry expands in the area. A large portion of the population increase is nonnative, and because federal funding (IHS) is intended for the native population, it may not be used for costs relating to the nonnative population. The Three Affiliated Tribes of the Fort Berthold Reservation has contracted with IHS under the provisions of Public Law 93-638, so management of medical services is locally controlled by the tribe.

Benefits and Challenges

The committee learned benefits of placing the entire Fort Berthold Reservation in a single public health unit include:

- Improved communication;
- Improved cultural awareness;
- Access to funding streams not available to other local public health units, including unique billing opportunities that include access to the Medicaid all-inclusive rate for billable services for tribal programs, which is federally funded and not available to nontribal public health units;
- Improved quality and access to services for tribal members;
- Improved coordination of public health services with medical services that will link screening and diagnosis to primary care available through the tribe's health center;
- An opportunity to coordinate behavioral health, public health, medical services, community health workers, long-term care, and substance abuse prevention and treatment;
- Improved coordination with State Department of Health programs and services;
- An opportunity to redirect resources of the four local public health units currently serving the Fort Berthold Reservation to other areas of western North Dakota;
- Improvements in emergency response;
- An opportunity to link public health outreach with screenings and services now covered under the Affordable Care Act; and
- A reduction in health disparities among tribal members.

The committee learned challenges of placing the entire Fort Berthold Reservation in a single public health unit include:

- Jurisdiction - Agreement among interested parties, including IHS, tribal, county, and local public health units would be needed;
- Staff recruitment - Adequate staffing for a new public health unit may be difficult because the area is already experiencing a shortage of qualified public health professionals;
- Proper training;
- Funding - Changes in the distribution of funding may result in the loss of funding for current local public health units, and tribal funding may not be adequate to provide for a local health department;
- Culture;
- Access and long travel times - The reservation is divided by the Missouri River, and area roads have deteriorated due to heavy traffic resulting in detours and long travel times to reach portions of the reservation; and
- Increased oil activity - Demand for health services in the western part of the state is increasing rapidly.

Idaho Model

The committee received information regarding the Coeur d'Alene Tribal Health Authority and the Coeur d'Alene Tribal Council and their efforts to provide health care services to both the Indian and non-Indian population through the Benewah Medical & Wellness Center in Idaho. The committee learned construction of the medical center was financed by a combination of tribal and community resources, including federal, state, community, and grant funds. The committee learned, while the tribe owns the facility, it is governed by the Coeur d'Alene Tribal Health Authority, and the board of directors, appointed by the tribal council, consists of tribal and nontribal community members. The Coeur d'Alene Tribe provides certain public health services on the reservation as part of its IHS Public Law 93-638 Compact, and a small part of the funding received from the Health Resources Service Administration (HRSA) Community Health Center Program relates to public health.

The committee learned funding for the Benewah Medical & Wellness Center provided by the HRSA Bureau of Primary Health Care, as part of its Community Health Center Program, has allowed the medical center to provide care on a sliding fee scale basis to the non-Indians in the region. Funding generated by the Coeur d'Alene Casino allows the tribe to buy health insurance for casino and tribal government employees. Indian Health Service Public Law 93-638 Compact funds allow the Benewah Medical & Wellness Center to serve uninsured American Indians at no charge. The committee learned the Coeur d'Alene Tribe partners in areas of public health where it lacks expertise, such as emergency preparedness, and except for occasional grants for projects or for flood protection or homeland security, the tribe does not receive any ongoing support for public health services from the state.

Governance Structure

The committee received information regarding potential governance options and issues of a separate public health unit serving the Fort Berthold Reservation.

The committee learned the Mandan, Hidatsa, and Arikara (MHA) Nation, through the IHS, could provide some of the same health care services that are provided by other public health units, including health promotion, communicable disease, school health, and noncertified nursing home visits; however, barriers include lack of adequate IHS funding and federal regulations that do not allow nonnative individuals to receive services at an IHS facility.

The committee learned the MHA Nation Health Authority already exists and was created to address governing body requirements of the health care systems on the reservation. The authority includes representation from various health care disciplines and could serve as the primary accounting and finance, audit, legal, and personnel management authority for a proposed tribal public health unit. The authority would report directly to the MHA Nation Tribal Business Council.

The committee learned creation of a federally qualified health center (FQHC) at Fort Berthold similar to the Idaho model would allow the facility to serve both native and nonnative individuals.

The committee learned a FQHC is federally funded, but it is meant to be a community facility with users making up over 50 percent of the FQHC board. In addition to the federal funding, funding is also received through Medicaid and various other reimbursements. The federally qualified health center provides primary care and also serves to educate the public. The committee learned FQHCs are heavily regulated by the federal HRSA, and they must provide services to underserved populations in designated shortage areas. There are currently four FQHCs in North Dakota.

The committee learned in addition to remedial care, FQHC objectives include public health activities; but to be successful, there must be collaboration from the tribe, HRSA, IHS, and local public health units serving the reservation.

The committee learned the MHA Nation Tribal Business Council is prepared to amend the MHA Nation Health Authority Board charter to include responsibility for managing the public health unit, additional appointments from the State Department of Health, and any required reporting. The committee learned representatives of the MHA Nation Health Administration met with representatives of the State Department of Health and district public health units to discuss governance and funding. The committee learned a local public health unit administered by the MHA Nation Health Authority would provide:

1. Cultural competence and coordination of programs that would improve access and quality of services for tribal members;
2. Unique billing opportunities, including access to the Medicaid all-inclusive rate for billable services;
3. Coordination of public health services with medical services already managed by the tribe;
4. Opportunities to coordinate all health programs;
5. Improved coordination with State Department of Health programs and services;
6. Improvements in the health status and reductions in the health disparities of tribal members;
7. An opportunity for the district public health units to focus on the growing population in western North Dakota;
8. A better-coordinated emergency response system;
9. A link to individuals in need of cancer screenings and other services now covered under the Affordable Care Act; and
10. A template for coordination of limited resources to maximize benefits and services for tribal members.

Funding

The committee received information on funding provided to public health units serving the Fort Berthold Reservation, gaming tax allocations in North Dakota and Wisconsin, and oil tax revenue allocations to the Three Affiliated Tribes.

Property tax mills assessed for health districts in 2010 ranged from 2.01 mills in Cavalier County to the maximum of 5.00 mills in Barnes, Foster, Kidder, Logan, McIntosh, and Stutsman Counties, and revenue ranged from $11,228 in Sioux County to $518,530 in Grand Forks County. The committee learned in certain city/county and single county health departments, including Burleigh, Cass, LaMoure, Pembina, Ransom, Richland, and Steele Counties, funding for local public health is provided from the county general fund. The committee learned 2010 health district assessments in the four multicounty health districts serving the Fort Berthold Reservation were:

- First District Health (Minot), including Burke, Bottineau, McHenry, McLean, Renville, Sheridan, and Ward Counties - $875,414.
- Upper Missouri District Health (Williston), including Divide, McKenzie, Mountrail, and Williams Counties - $361,517.
- Custer Health (Mandan), including Grant, Mercer, Morton, Oliver, and Sioux Counties - $545,642.
- Southwestern District Health (Dickinson), including Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope, and Stark Counties - $493,470.

The committee learned parts of six counties--Dunn, McKenzie, McLean, Mercer, Mountrail, and Ward--lay within the boundaries of the Fort Berthold Reservation, and while trust lands are exempted from ad valorem taxation, some properties on the reservation are subject to property taxation by the counties. The committee learned in 2010 the six counties within the boundaries of the Fort Berthold Reservation collected health district revenue totaling $907,406, of which an estimated $36,436 was collected on taxable property on the reservation. The committee learned to determine the amount of property tax revenue that could be raised by ad valorem taxation of trust lands, it would be necessary to value the trust lands in each county.

The committee received information regarding the use of gaming revenue for public health services in Wisconsin. The committee learned memorandums of understanding with tribes in Wisconsin list economic development initiatives to benefit the tribes, economic development initiatives in regions around casinos, promotion of tourism within the state, and support of programs and services, including public health, of the county in which the tribe is located as intended uses of the certain gaming revenue collected by the state. Five tribes have 10-year gaming compacts with North Dakota which expire on various dates in 2012 and 2013. The compacts require the tribes to pay the actual cost of state regulation, and the 2011-13 biennium appropriation for the Attorney General includes $261,128 of revenue from the tribes to pay for these costs. The committee learned North Dakota receives no other tribal gaming payments.

The committee received the following summary of revenue from oil and gas gross production tax, oil extraction tax, and tribal highway tax collected by the

State Treasurer and distributed to the Three Affiliated Tribes of the Fort Berthold Reservation:

Fiscal Year	Revenue
2009	$2.6 million
2010	$10.2 million
2011	$28.6 million
2012	$71.0 million

The committee learned the MHA Nation hopes to establish an FQHC. The Three Affiliated Tribes has received an $80,000 community health center planning grant to demonstrate the need for health services in the community and to plan for the development of a comprehensive community health center under Section 330 of the Public Health Service Act. The committee learned the planning grant funds will be used to conduct a comprehensive needs assessment, design an appropriate health care service delivery model, increase community involvement in the health center, and develop partnerships with other providers in the community. The planning grant for an FQHC provides an opportunity to merge primary care and public health services.

The committee learned funding would be necessary to develop public health infrastructure and training for a separate public health unit on the Fort Berthold Reservation.

Separate Health Unit Proposal

The committee received information from the MHA Nation regarding a funding model for a local public health unit that includes the entire Fort Berthold Reservation. The committee learned the MHA Nation is prepared to collaborate with the state of North Dakota for the integration of primary and public health care activities and share the cost based on population.

The committee learned representatives of the State Department of Health and the MHA Nation, administrators of local health units serving the reservation, a representative of the Master of Public Health Program at North Dakota State University (NDSU), and representatives of the Elbowoods Memorial Health Center and Common Enterprise Development of Mandan met to review a plan for tribal public health services. The State Department of Health assisted in drafting a preliminary budget for a tribal health department. The committee learned it was the consensus of the stakeholders that a separate public health unit for the reservation would not have a significant impact on existing public health units, and existing public health units offered assistance in drafting budgets and governance models. Stakeholders met to examine tribal codes and state statute changes necessary to form a public health unit on the reservation. While some codes exist, updating and consolidating tribal health and safety code into one document will provide clarity and better understanding of public health authority on the reservation. The group reviewed details of a model tribal health and safety code, and a smaller group will further examine the model and determine what should be presented to the tribal council.

The committee learned a bill draft to amend Chapter 23-35 to enable a tribal public health unit to form would allow the tribe to begin the process of establishing a tribal public health unit, and pilot funding would help to establish a tribal public health unit. The committee learned that once the tribal public health unit is established, other funding sources become available.

The committee learned the tribal public health budget for one year is estimated to total $700,000. Funding sources identified by the MHA Nation and the tribe's in-kind contribution are approximately $200,000 less than the estimated funding needed to establish a tribal public health unit.

The committee learned a two-year pilot project should be enough time to determine if a tribal public health unit will work. Estimated state funding needed for a two-year pilot project to fund startup costs and allow time to develop funding streams and a business plan is $500,000. The committee learned the tribe will contribute $50,000 for a consultant to complete an evaluation of the pilot project.

Recommendation

The committee recommends Senate Bill No. 2031 to amend Chapter 23-35 relating to public health units to define tribal health units and allow a public health unit to form on an Indian reservation. The bill provides $500,000, of which $200,000 is from the general fund and $300,000 is provided on a matching basis by the MHA Nation or other source, to the State Department of Health for the purpose of implementing a tribal public health unit pilot project. The bill requires a report to the Legislative Management semiannually.

STUDIES OF THE FUTURE OF HEALTH CARE DELIVERY IN THE STATE AND THE ABILITY OF THE UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES TO MEET THE HEALTH CARE NEEDS OF THE STATE

Section 3 of House Bill No. 1152 directed a study of the future of health care delivery in the state. The study was to focus on the delivery of health care in rural areas of the state and include input from the UND School of Medicine and Health Sciences Center for Rural Health, hospitals, and the medical community.

Section 23 of House Bill No. 1003 directed a study of the ability of the School of Medicine to meet the health care needs of the state. This study was to include a review of the health care needs of the state, options to address the health care needs of the state, and the feasibility and desirability of expanding the School of Medicine to meet the health care needs of the state.

Background

The committee reviewed previous studies relating to health care needs in the state and the School of Medicine, including studies by the 2005-06 interim Budget Committee on Health Care of the need for a comprehensive long-range study of the state's current and future health care needs and by the 2009-10 interim

Health and Human Services Committee of unmet health care needs in the state.

Programs and Services Available to Provide Health Care in Rural Areas of the State

The committee learned each of the eight regional human service centers provides direct outreach services on a regular basis and core services include:

- Work with high-risk families referred because of abuse or neglect;
- Direct case management services for individuals with developmental disabilities or serious mental illness;
- Mental health evaluations and therapy;
- Addiction evaluations and treatment;
- Partnership care coordination for children with serious emotional disturbance and their families;
- Care coordination and skills training for transition-aged youth; and
- Services to vulnerable adults.

The committee learned depending on the needs of the region other services may include tribal agency consultation transition services for youth leaving residential psychiatric care, psychiatrist consultations in nursing homes or jails, and crisis response in a natural disaster or suicide. Emphasis has been made on the provision of telemedicine services for areas lacking adequate onsite psychiatric services. The State Hospital has been exploring the possibility of providing telepsychiatric services to rural hospitals.

The committee learned the Medicaid program provides funding for eligible clients to receive services approved in the North Dakota state Medicaid plan. Health Tracks is a preventative health program available for children to age 21 who are eligible for Medicaid. In addition, Healthy Steps--the state's children's health insurance program (CHIP)--provides eligible children with health insurance coverage. Other health care programs include:

- Experience Health North Dakota which serves individuals diagnosed with asthma, diabetes, congestive heart failure, or chronic obstructive pulmonary disease. As of June 2011, 3,382 eligible recipients were receiving care coordination services, education materials, and access to a 24/7 telephone health information line. Of this total, 1,192 individuals resided in rural counties.
- The program of all-inclusive care for the elderly which is currently operational in two sites in the state--Bismarck serving 39 clients in June 2011 and Dickinson serving 21 clients in June 2011. The program of all-inclusive care for the elderly serves individuals that meet nursing home level of care in order to allow the individual to remain at home.
- Home and community-based services, which include homemaker and personal care services, transportation assistance, and home-delivered meals, are provided by qualified service providers (QSPs) through several different programs with varying levels of service and financial eligibility.

The committee learned the State Department of Health provides for population health--preventative systems and services to improve the health of the entire population--as opposed to direct health care provided personally to a patient. The only exceptions are the oral health program where employees provide fluoride varnish and sealants; emergencies where emergency medical shelters are established; and support services, such as laboratory analysis and coordination of care for children's special health services.

The committee learned the State Department of Health provides funding and supportive services for:

- Ambulance services staffing and training programs;
- Medical and dental loan repayment programs;
- Dental new practice grant program;
- Administration, recruitment, and placement activities for physicians, nurses, dentists, nurse practitioners, physician assistants, and mental health professionals through the National Health Service Corps;
- UND School of Medicine and Health Sciences Center for Rural Health to identify and designate health professional shortage areas;
- J-1 visa waiver program which allows foreign medical school graduates to serve in designated workforce shortage areas;
- Vaccines supplied by the federal government;
- Maternal and child health contracts with local public health units, nonprofits, and Indian reservations to provide direct health care services, including maternal care, well child checkups, newborn home visits, immunizations, oral health services, school health, and genetic services;
- Family planning program contracts to provide reproductive health care services for men and women;
- Donated dental services grant program;
- Women, infants, and children (WIC) program;
- Local public health state aid grant program which provides funding to local public health units that are required to provide various services to North Dakota citizens regardless of ability to pay;
- Hospital preparedness grant program which provides funding to hospitals to purchase certain emergency room equipment to prepare them to respond to disasters; and
- Diabetes disease management program.

Health Care Workforce Needs

The committee learned the need for more physicians in North Dakota is affected primarily by the state's geographic location and lack of adequate resources. Other significant influences include demographics, physician practice arrangements, an aging patient population, decreasing payment for services, and increasing practice costs. There are 1,537 regular active physicians in the state, not including retired physicians, residents, and medical students. This number

represents an 18 percent increase since 2005. The committee learned 84 percent of all physicians in the state, or 1,291 physicians, practice in the four urban areas and 16 percent, or 246 physicians, practice in rural areas. The committee learned 36 percent of the physicians in the state, or 557 physicians, are primary care physicians, including family practice, general medicine, internal medicine, and pediatrics. Nationally, as of December 2009, 15 percent of all physicians were in family practice, 28 percent were in internal medicine, and 13 percent were in pediatrics for a total of 56 percent of all physicians providing primary care services.

The committee learned in 2009 the 213 active patient care physicians for every 100,000 people in North Dakota was close to the national state median of 214 per 100,000; however, the physicians in North Dakota must serve larger geographic areas and a population that is older than the national average.

The committee reviewed provisions of the Affordable Care Act that require Medicaid expansion and essential benefits, including preventative screenings and immunizations, which could increase the demand on primary care providers, presenting additional challenges, particularly in rural areas.

Senate Bill No. 2158 (2009) allows Medicaid recipients to choose an advanced registered nurse practitioner as their primary care provider within the primary care case management program. The committee learned 110 nurse practitioners are serving as primary care providers for Medicaid recipients in the state.

The committee learned estimates indicate a need for an additional 200 to 300 more physicians in North Dakota in the next 10 years to 15 years, not including the physicians needed to replace those who retire or leave their practice.

The committee received the following recommendations from the North Dakota Medical Association and the UND School of Medicine and Health Sciences Center for Rural Health to address the state's need for more health care workers:

- Enhance physician recruitment and retention of School of Medicine graduates by increasing state investment in health care infrastructure and resources.
- Improve funding mechanisms and incentives to create more residency opportunities in the state, increasing financial support of the physician loan repayment program, and exploring other options for physician recruitment and retention.
- Improve quality of care, including appropriate insurance benefits, patient health care education, technology, and care coordination.
- Maintain payment levels for physicians and hospitals.
- Medical education and training, including the expansion of allied health, medical student and residency programs, and policies that support the acceptance of highly qualified residents into medical school.
- Continue and expand programs to encourage North Dakota students to pursue careers in health care.
- Provide a curriculum that best serves the state's population, including geriatric training for the state's aging population.
- Perform quality health workforce analyses upon which to base public policy.

School of Medicine Health Care Workforce Initiative

The committee received the School of Medicine and Health Sciences Advisory Council *First Biennial Report on Health Issues for the State of North Dakota 2011* prepared by the advisory council for the Legislative Assembly in 2011. The report outlines health care in the state and strategies to meet the state's health care workforce needs. The report identifies the largest driver of the cost of health care and need for health care providers in North Dakota is the state's aging population. The committee learned the advisory council proposed the following four core strategies to solve the health care supply and demand imbalance in the state:

1. Reduce the disease burden.
2. Improve the efficiency of the health care delivery system in the state.
3. Train more health care providers.
4. Retain more health care providers.

A summary of each of the strategies and related information received by the committee is listed below.

Reduction of the Disease Burden

Many health-related risks, including cardiovascular disease, stroke, obesity, and smoking, can be addressed through chronic disease management programs existing in the state. The new Master of Public Health Program offered with NDSU will offer not only a master's degree but also a certificate. It is anticipated the degree and certificate programs will attract current local public health workers, physicians, physicians in training, and hospital and clinic administrators.

Improvements in the Efficiency of the Health Care System in the State

Improvements to the efficiency of the health care delivery system include the regionalization of services, expanded use of mid-level providers, enhanced use of telemedicine, and improved coordination of services by the six largest health care systems.

Areas of concern include the level of Medicare, Medicaid, and commercial insurance reimbursement, professional staffing, and regulations that add to the cost of health care. A shortage of family practice, internal medicine, and mental health physicians in the state continues to affect access to health care. Increasing federal and state regulations have increased the need for staff that is not providing patient care. Creating opportunities or options for critical access hospitals to use mid-level practitioners to provide primary care in rural areas and providing incentives for tertiary hospitals to expand the use of telemedicine are important to the future of the delivery of health care services in the state.

Telemedicine services for which out-of-state licenses have been issued continues to expand and includes radiology, pathology, pediatrics, neurology, otolaryngology, psychiatry, emergency medicine, critical care medicine, internal medicine, pulmonary medicine, and cardiology.

Telepharmacy makes it possible for rural citizens to have pharmacy services established, restored, or retained. Audio and video computer links allow pharmacists to communicate face to face in real time with registered pharmacy technicians at remote sites.

Health care costs may be reduced if individuals are able to stay safely in their homes as they age. Affordability and access can be improved by balancing resources available for nursing home care and home and community-based services.

Ideal delivery models include a patient-centered medical home with integrated behavioral health specialists for consultation, assessment, and intervention. Medical home models improve health outcomes for chronic disease, reduce readmissions to hospitals, and assist consumers to navigate the health care delivery system.

The Health Information Technology Advisory Committee is involved in projects to assist providers to implement and use electronic health records, including low-interest revolving loans, regional extension center program match, and seminars and presentations to providers and associations. The implementation of electronic health records and a health information exchange will make medical information available in a format that is accessible quickly, easily, and securely--helping providers make quality health care available anywhere, anytime.

Training and Retention of Health Care Providers

The Student/Resident Experiences & Rotations in Community Health (SEARCH) program, funded by the United States Department of Health and Human Services, has been the primary community health program used to prepare students and residents in medicine, nursing, social work, physician assistant, psychology, and dentistry for primary care practice in health professional shortage areas. The program places students in the community where they work with other health care professionals, community leaders, and patients. Students gain an understanding of the health care needs and barriers in the community; however, federal funding for the program will likely be discontinued.

Project Collaborative Rural Interdisciplinary Service Training and Learning (CRISTAL) has engaged 46 students from several disciplines in a summer internship experience on North Dakota Indian reservations; however, federal funding for Project CRISTAL has been discontinued.

The School of Medicine has taught the interprofessional health care course to over 1,900 health professional students since 2006. The course teaches students the importance of working in teams and trains them in specific team-based skills. The course is required for students in medicine, nursing, occupational and physical therapy, and communication sciences and disorders. Interprofessional health care course faculty has been engaged to develop advanced experiences for students both on campus and at clinical sites. Teams of students experience complex patients, such as those with diabetes, those taking multiple medications, and the aging population in nursing homes.

The United States medical licensing examination (USMLE) consists of four examinations administered in three steps. During the period from 2008 through 2012, School of Medicine student pass rates on the Step 1 (93 percent) and Step 2 Clinical Knowledge (97 percent) examinations met the national average pass rate, but the School of Medicine pass rate of 100 percent on the Step 2 Clinical Skills examination exceeded the national average pass rate of 99 percent. In addition, the School of Medicine resident pass rate of 100 percent on the Step 3 examination also exceeded the national average pass rate of 96 percent. The average Medical College Admission Test (MCAT) scores of students entering the School of Medicine program have been lower than the national average; however, by graduation the average scores of the same students on licensure examinations have been at or above the national average.

The committee learned professional student exchange programs purchase student slots in dentistry, optometry, and veterinary medicine programs to facilitate access to degrees that meet North Dakota industry needs. The programs are not scholarships but rather a means for North Dakota students to access three programs not offered at North Dakota University System institutions. Students receive a support fee from the University System through the Western Interstate Commission for Higher Education (WICHE) sufficient to reduce their tuition to in-state tuition levels, and at some institutions applicants receive priority consideration for admission.

The School of Medicine leads the nation in the percentage of physicians choosing family medicine but is slightly below average in the percentage of graduates that remain in the state following training. Efforts at the School of Medicine to retain physicians include selecting more students from rural areas, an awareness of spousal issues, providing exposure to rural practice, and removing financial barriers.

North Dakota students are given first priority when admitting students into the medical school. The average medical school class consists of 80 percent North Dakota students, 10 percent Minnesota students, and 10 percent WICHE students. These averages do not include the Indians into Medicine Program (INMED) students.

The committee learned programs to enhance retention of medical school graduates in the state include:

1. **RuralMed program** which focuses on primary care in rural areas of the state. The School of Medicine 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. For purposes of the RuralMed program, a rural area is defined as anywhere in the state except Bismarck, Fargo, Grand Forks, and Minot. Twelve students are enrolled in the RuralMed program.

2. **Rural opportunities in medical education (ROME) program** allows approximately six to eight third-year medical students to live and train in a nonmetropolitan community under the supervision of physician preceptors. The ROME program exposes students to practicing medicine in rural areas throughout North Dakota. Students in the ROME program are given extended rural experience but also receive experience in one of the urban centers. From 2000 through 2012, 79 students participated in the ROME program, of which 11 percent have chosen residencies in North Dakota and 32 percent practice in the state.
3. **Integrated longitudinal clerkship** - A program at the School of Medicine campus in Minot designed to expose students to the community and allow students to follow families and learn from each experience.
4. **Residencies** needed for licensure. Three factors primarily affect where physicians practice--where they grew up, where they attended medical school, and where they completed their residency. While North Dakota has a high number of medical students for every 100,000 people (38.8) relative to the national state median (24.6) in 2009, the number of residents for every 100,000 people (18.1) was less than the national state median (26.8) in 2009. Family medicine, internal medicine, psychiatry, surgery, and transitional residencies are available in North Dakota. From 2008 through 2012, approximately 30 percent of North Dakota residency positions were filled with School of Medicine graduates, 23 percent were filled with other United States medical school graduates, 8 percent were filled with United States citizens graduating from international medical schools, and 39 percent were filled with noncitizen graduates from international medical schools. In 2012, 70 percent of graduates from North Dakota residency programs remained in the state to practice. The state has also been successful at recruiting School of Medicine graduates that have left the state to complete their residencies. The UND School of Medicine and Health Sciences Center for Rural Health found that of the School of Medicine graduates practicing in the state, 58 percent returned to the state from an out-of-state residency.
5. **Financial assistance programs** - School of Medicine financial assistance programs include federal and private loan programs, scholarships, and awards. Senior medical students may also apply for one of two loan programs available to provide funding for residency interview and relocation expenses.
6. **Loan repayment programs** - Health care professionals may apply for the medical personnel, physician, or dental loan repayment programs administered by the State Department of Health. Chapter 43-17.2 provides for the state community matching physician loan repayment program. A qualifying physician may receive up to $22,500 per year for up to two years for a total of $45,000. Section 43-12.2-01 provides for qualifying mid-level practitioners to receive loan repayments totaling up to $30,000 over two years. Communities must contribute an amount at least equal to the amount of the state contribution for the physicians and mid-level practitioners. During the 2007-09 and 2009-11 bienniums, a total of 9 physicians, 5 mid-level practitioners, and 12 dentists have been accepted into the programs. The Health Council establishes physician, dental, and mid-level practitioner loan program eligibility requirements and approves awards to applicants. At this time, preference is to place professionals in the western part of the state, and it is given significant consideration when reviewing applicants. The State Department of Health also places a high priority on applicants willing to serve in rural communities.

2011 Legislative Action

The committee reviewed the School of Medicine proposals considered by the Legislative Assembly in 2011. The modified health care workforce initiative included a new master of public health degree in collaboration with NDSU, expanding training in geriatrics, increasing the number of medical students by 8 per year for four years beginning in July 2012, increasing the number of resident positions by 9 per year for three years beginning in July 2012, and increasing the number of health sciences students by 15 per year for three years beginning in July 2012. The Legislative Assembly appropriated $46.8 million from the general fund to the School of Medicine for the 2011-13 biennium. Included in the funding is $4.3 million of initiatives relating to:

- A new master of public health degree at a cost of $1.2 million.
- Expansion of geriatric training at a cost of $1.2 million.
- Increasing the number of medical and health sciences students and residencies at a cost of $1.8 million.
- One-time funding for a space utilization study of the School of Medicine at a cost of $100,000.

The committee learned the cost to continue the initiatives is estimated to total $12 million during the 2013-15 biennium and $15.8 million during the 2015-17 biennium. The eight medical student slots added will not enter the provider workforce until 2019.

Status of New and Expanded Programs

The committee learned 27 students are enrolled in the Master of Public Health Program, and the first class will graduate in 2014. The School of Medicine is recruiting a neurologist and a geriatrician to help train students and community practitioners. The School of Medicine has admitted an additional 8 medical and 15 health sciences students and expanded residency slots, all with a focus on family medicine and general surgery in rural areas of the state. The admission policy at the School of Medicine has been updated to focus on students likely to practice primary care in rural areas of the state.

The School of Medicine issued a request for proposal for the nine residency slots approved by the Legislative Assembly in 2011. The medical school received six responses, including an obstetrics and gynecology residency proposal. The state currently does not have an obstetrics and gynecology residency.

2013 Legislative Request

The committee received information on School of Medicine proposals to be considered by the Legislative Assembly in 2013. The *Second Biennial Report on Health Issues for the State of North Dakota* will provide a formal update to the comprehensive workforce plan and will be presented to the Legislative Assembly in 2013. The report will include a proposal for the second phase of the health care workforce initiative, including an additional 8 medical students, 15 health sciences students, and 8 residency slots and a facility to house the more than 200 new students, faculty, and staff associated with the full implementation of the initiative. The committee learned nationally the ratio of medical school applicants to those accepted is 3-to-1, and in North Dakota the ratio is about 5-to-1. The committee learned there would be enough quality student applicants for the School of Medicine to admit another eight students without compromising the quality of the class.

School of Medicine Space Utilization Study

The committee learned the Legislative Assembly in 2011 provided $100,000 to the School of Medicine for a space utilization study of the School of Medicine during the 2011-13 biennium. The committee learned the second phase of the workforce initiative will require added facilities to accommodate the additional students and faculty. The committee learned JLG Architects and Perkins+Will--a national design firm with experience in health care education--performed the space utilization study of the School of Medicine. The study considered university initiatives, including enrich the student learning environment; encourage gathering; facilitate collaboration; expand the university's presence; and enhance the quality of life for the faculty, staff, and students. In addition, study consideration was given to School of Medicine objectives, including collocating health sciences and medical student education; providing space for the recruitment and retention of faculty required with increased enrollment; analyzing the existing building to support the missions of education, research, and service; verifying that accreditation requirements are met; and maximizing federal indirect cost return.

The committee learned the main School of Medicine building is a retired hospital constructed in 1952 and repurposed in 1988 as the School of Medicine. Challenges of the existing facility include:

- A small structural grid;
- Low floor-to-floor heights;
- Lack of natural light;
- Age of major building systems and components;
- Aging windows and building envelope; and
- Limitations on technology and renovation.

Many of the classrooms, laboratories, patient-centered learning environments, and lecture halls are overcrowded, and recommended clearances are unobtainable. In addition, other departments related to health care education are located at different locations because there is not room in the current facility.

The committee learned the evolution of the medical education curriculum has left spaces, such as large lecture halls, underutilized, while others, such as the anatomy laboratory, are too small. The committee learned there is little flexible space in the current facility, and the facility is at maximum capacity. The committee learned full implementation of the comprehensive workforce plan will increase class size 24 percent which translates into 162 students.

The committee learned the space study of the medical school facility concluded:

1. The current facility is being used effectively, and utilization is at or above national benchmarks;
2. The current facility is unable to provide space for more students, faculty, and staff; and
3. Extensive renovation is inadvisable.

The committee learned the School of Medicine and Health Sciences Advisory Council reviewed facility options to accommodate the student enrollment growth associated with the health care workforce initiative at the School of Medicine. All of the options reviewed meet the needs of the workforce initiative, and the advisory council evaluated the options to determine economic cost and how well each option will meet the state's future needs. The cost estimates for each option include construction, site preparation, and technology. The following is a summary of the three construction options:

1. Option 1 - With an estimated cost of $38.5 million, includes an 80,103 gross square footage (GSF) addition with shared education space and the renovation of 42,311 GSF of faculty offices and education space. This option moves some instruction into the new space and uses the old space for administration and other instruction. The committee learned advantages of this option include the lower cost and shorter completion time. Disadvantages include logistical difficulties, ongoing maintenance of the old facility, limitations on the development of optimal collaborative and educational space to bring health-related training programs together, the need for a pedestrian bridge, and minimal site room for future growth.

2. Option 2 - With an estimated cost of $68.3 million, includes a 169,390 GSF addition with shared education space and student collaboration space and the renovation of 48,332 GSF of faculty office, collaboration, and administration space. The committee learned advantages of this option include the intermediate cost and completion time and compliance with established national standards for educational facilities. Disadvantages include logistical difficulties, ongoing maintenance of the old facility, some limitations on the development of optimal collaborative and educational space, the need for a pedestrian bridge, and minimal site room for future growth.
3. Option 3 - With an estimated cost of $124 million, creates a new 376,812 GSF building with shared education space, student and faculty collaboration space, faculty and administration offices, and research facilities. The committee learned advantages of this option include its potential for growth and full integration of health-related training programs, minimal effect on School of Medicine operations during construction, low maintenance and operational costs, longer useful life, and a positive effect on the university's facilities and administrative (F&A) rate used to calculate federal research grant reimbursements. Disadvantages include the high initial cost and long completion time. The committee learned because the School of Medicine is a research facility, the new construction's positive effect on the F&A rate also has a positive economic impact on the university.

The committee received the following information regarding the estimated 40-year life cycle cost of the current facility and each of the three options:

Option	40-Year Life Cycle Cost (Amounts Shown in Millions)
Current facility without changes	$102.7
Option 1	$163.8
Option 2	$214.1
Option 3	$159.9

The committee learned lower maintenance and utility costs and the additional revenue anticipated as a result of the increased F&A rate results in the lower 40-year life cycle cost of Option 3. Because most of the university's research space was constructed with federal funds, it is not included in the F&A rate. The committee learned the university's F&A rate of 38 percent is the second lowest in the nation. Because the building's research space would be constructed using state funds, the cost would be considered in the calculation of the university's F&A rate. The committee learned the new building could also have a positive effect on the recruitment of professionals and on the amount of research awarded to the School of Medicine.

The committee learned based on lower maintenance and operating costs in the future and the positive economic impact to the university, the School of Medicine and Health Sciences Advisory Council recommends Option 3--the construction of a new facility.

If approved, construction or renovation planning would begin in July 2013 and take one year. Construction is anticipated to last another two years with the students beginning to use the facility during the summer of 2016.

Recommendation

The committee recommends supporting the construction of a new School of Medicine facility at an estimated cost of $124 million to accommodate the student enrollment growth associated with the health care workforce initiative at the School of Medicine.

MANDATED HEALTH INSURANCE COVERAGE

Section 54-03-28 provides a legislative measure mandating health insurance coverage may not be acted on by any committee of the Legislative Assembly unless accompanied by a cost-benefit analysis. The committee was assigned the responsibility of recommending a private entity, after receiving recommendations from the Insurance Commissioner, for the Legislative Council to contract with to perform the cost-benefit analysis for the 2013 legislative session. The Insurance Commissioner is to pay the costs of the contracted services, and each cost-benefit 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 the 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 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. The Public Employees Retirement System must include information on the utilization and costs relating to the mandated coverage and a recommendation on whether the coverage should continue. The 2009-10 interim Health and Human Services Committee learned PERS is not required to use 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.

The committee learned the Insurance Commissioner has budgeted $15,000 to pay the costs of the contracted services for the 2013 legislative session, the same as the amount provided for the 2011 legislative session.

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 to Milliman USA for general project work during the 2005 legislative session for total payments during the 2005 legislative session of $13,929. During the 2007 legislative session, there were no health insurance mandates referred for cost-benefit analysis. The Insurance Department paid a total of $28,070 to Milliman USA for analyses of three bills during the 2009 legislative session and $14,982 to Milliman USA for analysis of one bill during the 2011 legislative session.

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 2003-04 and 2005-06 interim Budget Committees on Health Care, the 2007-08 interim Human Services Committee, and the 2009-10 interim Health and Human Services Committee recommended that the Insurance Department contract with Milliman USA for cost-benefit analysis services on health insurance mandates during the 2005, 2007, 2009, and 2011 legislative sessions. The committee learned the 2009-10 interim Health and Human Services 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 legislative session and 20 days for one bill proposed during the 2005 legislative session. There were no mandates proposed during the 2007 legislative 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 legislative session. Analysis performed on the one bill introduced during the 2011 legislative session took 14 days.

Legislative Rules Regarding Bills That Include Health Insurance Mandates

The committee learned the 2009-10 interim Health and Human Services 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 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 has not yet adopted the amendment.

Insurance Commissioner Recommendation

The Insurance Commissioner recommended, based on the proposal received, the Legislative Council continue to contract with Milliman, Inc., for cost-benefit analyses during the 63rd Legislative Assembly.

Recommendations

The committee recommends the Legislative Council contract with Milliman, Inc., for cost-benefit analyses of legislative measures considered by the 63rd Legislative Assembly mandating health insurance coverage pursuant to Section 54-03-28.

STATE FIRE MARSHAL REPORT

The Legislative Assembly in 2009 approved House Bill No. 1368, which created Chapter 18-13 relating to reduced ignition propensity standards for cigarettes and penalties for wholesale and retail sale of cigarettes that violate the reduced propensity standards. Section 18-13-02(6) requires the State Fire Marshal to review the effectiveness of test methods and performance standards and report each interim to the Legislative Council the State Fire Marshal's findings and any recommendations for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes. The committee was assigned the responsibility to receive this report.

The chapter provides for enforcement of the standards by the State Fire Marshal, Tax Commissioner, and Attorney General and for monetary violations to be deposited in the fire prevention and public safety fund to be used by the State Fire Marshal to support fire safety and prevention programs. In addition, fees collected for testing cigarettes are to be used by the State Fire Marshal for the purpose of processing, testing, enforcement, and oversight of ignition propensity standards. Cigarette manufacturers are required to pay the State Fire Marshal an initial $250 fee for certification, which is deposited in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund. The committee learned deposits into this fund totaled $228,250 during the 2009-11 biennium, and contract expenditures totaled $9,438.

The committee learned the State Fire Marshal has received and certified 928 brand-style cigarettes from 22 manufacturers using 11 testing laboratories for certification testing. The committee learned the guidelines

for testing cigarettes in Section 18-13-02 are the standards used nationwide, and they appear to be effective. In addition, there have been no fines or penalties for noncompliance, and the fire prevention and public safety fund under Section 18-13-08 has not received any funding. The State Fire Marshal recommended no changes to Chapter 18-13.

STATE DEPARTMENT OF HEALTH REPORT ON INVENTORY OF MATERIAL RELATING TO ABORTIONS

The Legislative Assembly in 2011 approved House Bill No. 1297, which expands information related to abortions and alternatives to abortion that must be included in the printed materials that are provided by the State Department of Health. The bill also provides for additional reporting requirements for the department. Section 15 of the bill requires the department to:

- Create an inventory of the data, reports, records, and other material the department is required to gather, receive, create, or maintain relating to abortions as required under Chapter 14-02.1. The inventory must include information regarding the frequency with which the items in the inventory must be gathered, received, or created;
- Create a report that outlines the department's practices in gathering, receiving, and creating the items in the inventory; and
- Make three reports to the Legislative Management on the status and outcome of the creation of the inventory and the practices report. The first report must be made before January 1, 2012; the second before April 1, 2012; and the third before September 1, 2012. The committee was assigned the responsibility to receive these reports.

Section 16 of the bill limited the cost to the State Department of Health of producing printed information related to abortion data to $50,000.

The committee received the reports and learned Section 14-02.1-02.1 requires the State Department of Health to develop printed information as follows:

- Geographically indexed materials designed to inform women of public and private agencies and services available to assist them through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies;
- Materials, published in booklet format, designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at certain stages of pregnancy;
- Materials that include information on the support obligations of the father; and
- Materials that contain objective information describing the various surgical and drug-induced methods of abortion, including the immediate and long-term medical risks.

The committee learned the State Department of Health had previously produced and distributed the information related to public and private services available and the characteristics of the unborn child. The department determined it would be more efficient to combine the materials related to the characteristics of the unborn child, the support obligations of the father, and the various methods of abortion and their effects into one publication. The department reported due to the volume of information related to available public and private services, this information will be produced in a separate document. The publications do not include information related to family planning, but family planning information is available from providers identified in the department's directory on public and private service providers.

The publications will be available in booklet form and electronically on the department's website. The publications will be distributed statewide to regional human service centers and local public health units and are also required to be distributed at the Red River Women's Clinic in Fargo.

The committee learned pursuant to Section 14-02.1-02.2, an abortion compliance report and an abortion data report must be filed for each abortion that takes place in the state. The existing data report was redesigned to include adverse event data collection, and a new compliance report was developed. The department began using both forms on August 1, 2011; however, a lawsuit has been filed objecting to the adverse event data collection and to several questions on the compliance report. The committee learned the plaintiff in the lawsuit has continued to submit the reports but has not provided the information that is subject to the lawsuit. The committee learned the Division of Vital Records is required to produce an annual report on abortions, and the report is available on the State Department of Health website.

HEALTH COUNCIL REPORT ON HEALTH CARE BED RECOMMENDATIONS

The Legislative Assembly in 2011 approved House Bill No. 1040, which extends the moratorium on expansion of basic care bed capacity and the moratorium on expansion of long-term care bed capacity from July 31, 2011, to July 31, 2013. As of November 2012, there were 6,182 licensed long-term care beds and 1,827 basic care beds in the state. Section 3 of the bill requires the Health Council review current health care bed recommendations to determine if changes should be made to better serve the population of North Dakota and report its findings to the Legislative Management by July 1, 2012. The committee was assigned the responsibility to receive this report.

The committee received the report and learned average monthly nursing facility Medicaid recipients decreased from 3,589 in 2004 to 3,120 in 2011, and average monthly basic care Medicaid recipients increased from 468 in 2004 to 513 in 2011. The committee learned through April 2012 the monthly recipients for nursing facilities average 3,078, and for basic care the average is 566. The committee learned appropriations for nursing facilities have increased 81.7 percent over the last 15 years, while home and community-based services increased by 215.7 percent over the same period. The committee learned while both are increasing, growth in the utilization of home and

community-based services has outpaced growth in the use of nursing facilities. The committee learned the number of average monthly home and community-based services recipients has increased from 1,707 in 2004 to 2,371 in 2011. The committee learned in 2010 North Dakota had 57.10 nursing home beds and 16.49 basic care beds per 1,000 population over age 65 (15.53 basic care beds per 1,000 population over age 65 if special care facilities are excluded). The committee learned the current targets of 60 nursing facility beds per 1,000 population aged 65 and above and 15 basic care beds per 1,000 population aged 65 and above were adopted by the Health Council in January 1994. The committee received the following Health Council recommendations:

- Continue the moratorium on nursing facility and basic care beds in the state;
- Reduce the target for nursing facility beds in the state from 60 to 55 nursing facility beds per 1,000 population aged 65 and above;
- Continue the target for basic care facility beds at 15 basic care beds per 1,000 population over age 65; and
- The Legislative Assembly reconsider provisions that allow for new and additional basic care beds.

The committee learned in April 2012 there were over 500 unoccupied nursing facility beds and 255 unoccupied basic care beds in the state. The committee learned although the number of basic care beds in the state remains over the target, there are areas of the state where demand for beds exceeds supply. The committee received information from a basic care facility in Steele regarding the effect of the moratorium on the facility in an area of the state with an aging population and the facility's requests for additional basic care beds which were denied by the State Department of Health. The committee learned provisions of the moratorium include several options by which beds can be added to the state's licensed basic care bed capacity, including the conversion of nursing facility beds to basic care and the transfer of beds. The committee received information regarding a transfer program or some other mechanism to utilize the beds that are currently open.

Recommendations

The committee accepted the recommendations of the Health Council to reduce the recommended target number of nursing facility beds in the state from 60 to 55 nursing facility beds per 1,000 population aged 65 and above and to continue the recommended target number for basic care facility beds at 15 basic care beds per 1,000 of population over age 65. The committee recommends House Bill No. 1035 to extend the current moratoriums on the expansion of nursing facility and basic care beds through July 31, 2015.

OTHER INFORMATION RECEIVED

Health Care Data Committee

The committee reviewed information from the Health Care Data Committee of the Health Council regarding the mission of the Health Care Data Committee. The committee learned the Health Care Data Committee was created by the Legislative Assembly in 1987, and its purpose is to make public the information necessary for health care provider price comparisons. The committee learned since the legislation was passed, Medicare began charging for data, and there has been a reduction in the amount of information available. The committee learned costs associated with the compilation and transmission of the data and potential difficulties in the comparability of health care services have resulted in concerns among health care providers.

The committee learned other health care data currently available at the State Department of Health could be used for medical research in the new Master of Public Health Program at the state's two universities. The committee learned federal grants require certain data collection and reporting, and technology has made it possible to collect more data. Representatives of the Health Care Data Committee suggested the data committee either work to increase the data provided under the existing law or consider legislation to change the data collected and distributed by the data committee.

The committee learned information comparing the cost of various health care services will continue to be available through the Centers for Medicare and Medicaid Services.

Recommendation

The committee recommends House Bill No. 1036 to change the duties of the Health Care Data Committee. The bill changes the name of the Health Care Data Committee to the Health Data Committee. The bill removes provisions that require the data committee to compile information related to charges, operating costs, revenues, capital expenditures, and utilization at hospitals in the state and to prepare a report to provide information to the public. The bill also repeals Section 23-01.1-02.1 which requires the data committee to create a data collection, retention, processing, and reporting system that will allow the distribution of information comparing the average fees charged by physicians practicing in the state and requires insurers, nonprofit health service corporations, health maintenance organizations, and state agencies provide data and information.

Smoking Rates and Related Trends

The committee received information regarding smoking rates and related trends in tobacco prevention and control spending, cigarette tax rates, and smoke-free environment laws. The committee learned cigarette use is measured based on data from the CDC behavioral risk factor surveillance survey. The committee received information regarding adult cigarette use in each state and the District of Columbia from 2000 to 2010. Overall adult cigarette use in North Dakota declined from 23.2 percent in 2000 to 17.4 percent in 2010. The 5.8 percent reduction in adult cigarette use from 2000 to 2010 in the state ranked North Dakota 18th among the 50 states and the District of Columbia.

The committee received information on tobacco prevention spending and tobacco use in North Dakota and other states. The committee learned tobacco prevention and control spending and policies vary widely from state to state, and these differences make comparisons between the states difficult. Other factors not considered in these comparisons may also affect cigarette use by adults in these states.

The committee learned of the five states that had the most significant decrease in adult cigarette use from 2000 to 2010, three--New Hampshire, Nevada, and Rhode Island--decreased funding for tobacco prevention and control from 2003 to 2010, while two--Iowa and Connecticut--increased funding. Of the five states that had the least change or an increase in adult cigarette use, three--Louisiana, Montana, and Oklahoma--increased funding, Mississippi decreased funding, and West Virginia had minimal funding changes over the eight-year period. From 2003 through 2009, funding for tobacco prevention and control in North Dakota ranged from $3.4 million to $4.5 million annually, while the adult smoking rate decreased from 20.5 percent to 18.6 percent during the same period. Funding for tobacco prevention and control in North Dakota increased to $9.4 million in 2010, and the smoking rate decreased to 17.4 percent. In 2010 among the 50 states, only North Dakota fully funded the CDC best practices for comprehensive tobacco control. States funding the lowest level of CDC best practices for comprehensive tobacco control in 2010 were Missouri (3 percent) and New Hampshire (5 percent).

The committee received a summary of cigarette tax rates compared to adult cigarette use for selected states from 2000 through 2010. The committee learned in 2000 cigarette tax rates charged by states ranged from $.025 per package in Virginia to $1.11 per package in New York. In 2010 state cigarette tax rates ranged from $.17 per package in Missouri to $4.35 per package in New York. Of the five states that had the most significant decrease in adult cigarette use from 2000 to 2010, three--New Hampshire, Rhode Island, and Connecticut--increased cigarette tax rates several times over the 10-year period. Of the five states that had the least change or an increase in adult cigarette use, four--Louisiana, Mississippi, Oklahoma, and West Virginia--increased cigarette tax rates once, while Montana increased its cigarette tax rate twice over the 10-year period. In North Dakota the cigarette tax rate remains unchanged from 2000 at $.44 per package, while in South Dakota the cigarette tax rate was increased twice over the 10-year period and is currently $1.53 per package. Minnesota has increased its cigarette tax annually since 2005 and currently charges $1.586 per package.

The committee received a summary of smoke-free environment laws by state as of December 31, 2009. The committee learned 21 states and the District of Columbia had smoke-free environment laws enacted for worksites, restaurants, and bars. Nineteen states had no smoke-free environment laws, and the remaining 10 states had laws providing partial coverage. Of the five states that had the most significant decrease in adult cigarette use from 2000 to 2010, two--Rhode Island and Iowa--covered worksites, restaurants, and bars in their smoke-free indoor air laws. Nevada covered worksites and restaurants, New Hampshire covered just restaurants, and Connecticut had no smoke-free indoor air coverage. Of the five states that had the least change or an increase in adult cigarette use, three--Mississippi, Oklahoma, and West Virginia--had no laws for smoke-free indoor air. Montana covered worksites, restaurants, and bars in its smoke-free indoor air laws; Louisiana covered worksites and restaurants; South Dakota smoke-free indoor air laws covered worksites and restaurants; and Minnesota smoke-free indoor air laws covered worksites, restaurants, and bars. North Dakota prohibits smoking in all enclosed areas of public places and places of employment but provides exemptions for other areas, including bars. In addition, local governments may enact more stringent tobacco control laws. However, initiated statutory measure No. 4 approved in November 2012 prohibits smoking in public places and most places of employment in the state, including certain outdoor areas.

Emergency Medical Services Advisory Council

The committee received information regarding an Emergency Medical Services (EMS) Advisory Council report on the status of EMS in the state. The Legislative Assembly in 2009 provided $500,000 to study the EMS system in the state. The SafeTech Solutions, LLP, report on the challenges facing EMS in rural North Dakota expressed a concern regarding the lack of adequate rural, out-of-hospital EMS in North Dakota. The committee learned in rural areas, where volumes of medical transports are low, EMS relies on donations, local tax revenues, and volunteer labor. In western North Dakota, increasing demand for services is a concern, including a need for specific training and environmental challenges. In other parts of the state, the aging population is an issue. The Legislative Assembly in 2011 provided $940,000 for training grants for the 2011-13 biennium. The committee learned during the first year of the 2011-13 biennium, $1.25 million was provided for staffing grants, and during the second year, $3 million is available for ambulance operations. The committee learned the State Department of Health will propose combining staffing grants with the ambulance operation funding to provide base funding of $4.25 million for the 2013-15 biennium. The committee learned 86 percent of the ambulance services in the state rely primarily on volunteers whose labor cost would exceed an estimated $31 million per year. Aging volunteers and the decline in volunteerism has resulted in a shortage of EMS workers. The committee learned characteristics of successful rural services include engaged, trained, dedicated, and rested leaders; professional standards; recruitment and retention plans; organization; adequate funding; and well-maintained facilities and equipment. The advisory council was directed by the Legislative Assembly in 2011 to make recommendations to the State Department of Health regarding the establishment of funding areas and criteria to determine funding levels for each area. The

committee learned funding areas have been determined, but the advisory council continues to work on criteria for the allocation of funds to each area.

The committee learned the Energy Infrastructure and Impact Office has made $2 million of funding from the oil and gas impact grant fund available for EMS, and an additional $30 million contingent appropriation from the oil and gas impact grant fund was provided for oil and gas impact grants related to emergency services during the November 2011 special session.

Community Paramedic Program

The committee received information regarding community paramedics. The committee learned there is the potential for community paramedics to provide additional cost-effective clinical and public health services, particularly in rural areas of the state. The ability to receive reimbursement for these services could enhance the sustainability of the current EMS system. The committee learned EMS systems can function with volunteer personnel by responding to up to approximately 350 emergency calls per year, while fee-for-service systems are generally not sustainable until the service responds to at least 650 emergency calls per year. Increased demand is causing some communities with volunteer responders to increase to more than 350 emergency calls but still less than 650. The committee learned if the role of paramedics could be expanded to that of community paramedics, fee-for-service EMS systems could likely be sustained. Five states currently use community paramedics. The committee learned appropriately trained community paramedics could provide billable services, including:

1. Community mid-level clinical evaluation and treatment;
2. Community level call-a-nurse service and advice;
3. Chronic disease management support;
4. Case management of complex cases;
5. Worksite wellness facilitation and onsite clinical support; and
6. School wellness and mid-level clinical services.

The committee learned stakeholders have been gathering information and are considering issues related to needs, certification, regulation, and reimbursement. Stakeholders are asking for funding for a state regulator to oversee the community paramedic program.

Recommendation

The committee recommends Senate Concurrent Resolution No. 4002 for a Legislative Management study of the potential for community paramedics to provide additional clinical and public health services particularly in rural areas of the state, including the ability to receive reimbursement for these services and the effect these reimbursements would have on the sustainability of EMS providers.

Status of State Trauma System

The committee also received information on the state trauma system and learned it relies heavily on the in-kind support of the six Level II trauma centers across the state, but the system has been struggling to meet increased demands over the past two years. The committee learned from 2010 to 2011, rural hospitals experienced a 21 percent increase in the number of trauma patients transferred to Level II trauma centers. The committee learned initiatives to improve the state's trauma system include:

- Increased trauma designation site visits;
- Additional advanced trauma life support (ATLS) education for Levels IV and V trauma centers;
- A rural trauma team development course;
- Increased funding for the state medical director;
- An associate state trauma coordinator; and
- State trauma registry support.

Report on the Construction of the School of Medicine Southwest Campus Facility

The committee received a construction report and conducted a tour of the Bismarck Center for Family Medicine Clinic and Pharmacy and the School of Medicine Southwest Campus offices, meeting rooms, and classrooms. The Legislative Assembly in 2009 provided $5.4 million for the construction of the new Southwest Campus facility in Bismarck, and the State Board of Higher Education authorized an additional $750,000 for furniture, fixtures, and equipment. The committee learned the School of Medicine partnered with Bismarck Partners, LLP, and Medcenter One to construct the four-story building which was completed within the budgeted amounts. The Bismarck Center for Family Medicine Clinic and Pharmacy and the School of Medicine Southwest Campus offices, meeting rooms, and classrooms occupy the first and second floors of the facility. Medcenter One administrative offices will occupy the third floor, and the Ritterbush Auditorium and Medcenter One education offices will occupy the fourth floor. In August 2012 Medcenter One was acquired by Sanford Health. The committee learned a condominium agreement, allocating 25 percent to each floor, will manage the general expenses associated with building maintenance. The committee learned the clinic began seeing patients on July 5, 2012.

HIGHER EDUCATION COMMITTEE

The Higher Education Committee was assigned the following responsibilities:

1. Section 3 of 2011 House Bill No. 1033 provided for a Legislative Management study of higher education to include a review of higher education funding mechanisms and higher education budget methods.
2. Section 1 of 2011 House Bill No. 1036 provided for a Legislative Management study of developmental education, including a review with the Department of Public Instruction and North Dakota University System of the secondary schools attended by students requiring developmental education, the reasons students need developmental education, efforts to reduce the number of developmental education students, the alignment of elementary and secondary education standards, curriculum and textbooks with higher education admissions standards, and the best practices for alleviating development education.
3. Section 2 of 2011 Senate Bill No. 2351 provided for a Legislative Management study of mandatory student fees and student fees for optional services at higher education institutions, including the manner in which the fees are determined, identified, and justified, and whether the programs and services supported by the fees should instead receive funding from tuition charges or another funding source.
4. Receive reports from the Statewide Longitudinal Data System Committee pursuant to North Dakota Century Code Section 15.1-02-18 on the status of the plan for a longitudinal data system.
5. Receive a biennial report from the University of North Dakota (UND) School of Medicine and Health Sciences Advisory Council pursuant to Section 15-52-04 regarding the strategic plan, programs, and facilities of the school.
6. Receive annual reports 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.
7. Receive reports from any tribally controlled community college receiving a tribal college assistance grant under Chapter 15-70 detailing grant expenditures and recipient demographics.
8. The Legislative Management Chairman directed the committee to study alternative funding methods for higher education that reward outcomes such as increasing the percentage of degrees awarded, increasing the percentage of on-time graduations, increasing the percentage of degrees awarded to low-income students, or increasing first-year student retention. The directive to the committee also provided the study include a review of options for a funding methodology based on the actual cost of delivering an educational program and a review of options to develop a system of weighted student funding that incorporates a three-tiered funding philosophy.
9. The Legislative Management Chairman directed the committee to study higher education governance, including the role of the State Board of Higher Education, University System office, and university presidents. The directive to the committee also provided the committee review constitutional and statutory provisions and consider changes to improve the current governance model.
10. The Legislative Management Chairman directed the committee to study methods to improve higher education accountability, including potential accountability measures.
11. Receive information from the University System office and Dickinson State University regarding the internal review report of international transfer agreements at Dickinson State University. This duty was assigned to the committee by directive of the Legislative Management Chairman.

Committee members were Representatives Bob Skarphol (Chairman), Thomas R. Beadle, Lois Delmore, Mark A. Dosch, Kathy Hawken, Joe Heilman, Dennis Johnson, Nancy Johnson, RaeAnn G. Kelsch, Bob Martinson, David Monson, Mark Sanford, and Clark Williams and Senators Tim Flakoll, Tony Grindberg, Ray Holmberg, Karen K. Krebsbach, Dave Nething, Larry Robinson, Mac Schneider, and Ryan M. Taylor.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

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 met 10 times. The table below summarizes the meeting dates of the Higher Education Roundtable from the 1999-2000 interim through the 2009-10 interim:

Interim	Meeting Dates
1999-2000	September 28-29, 1999 (Jamestown) October 29, 1999 (Carrington) April 19, 2000 (Rugby)

Interim	Meeting Dates
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)
2009-10	September 13-14, 2010 (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:

- Provide continuing appropriation authority for higher education institutions' special revenue funds, including tuition, through the end of the next biennium.
- 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.
- Authorize the University System to continue or carry over at the end of the biennium unspent 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 related to the study of higher education:

1. Section 3 of 2011 House Bill No. 1033 provided for a Legislative Management study of higher education to include a review of higher education funding mechanisms and higher education budget methods.
2. Section 1 of 2011 House Bill No. 1036 provided for a Legislative Management study of developmental education, including a review with the Department of Public Instruction and University System, of the secondary schools attended by students requiring developmental education; the reasons students need developmental education; efforts to reduce the number of developmental education students; the alignment of elementary and secondary education standards, curriculum, and textbooks with higher education admissions standards; and the best practices for alleviating development education.
3. Section 2 of 2011 Senate Bill No. 2351 provided for a Legislative Management study of mandatory student fees and student fees for optional services at higher education institutions, including the manner in which the fees are determined, identified, and justified, and whether the programs and services supported by the fees should instead receive funding from tuition charges or another funding source.
4. As directed by the Legislative Management Chairman, study alternative funding methods for higher education that reward outcomes such as increasing the percentage of degrees awarded, increasing the percentage of on-time graduations, increasing the percentage of degrees awarded to low-income students, or increasing first-year student retention. The directive also provided the study include a review of options for a funding methodology based on the actual cost of delivering an educational program and a review of options to develop a system of weighted student funding that incorporates a three-tiered funding philosophy.
5. As directed by the Legislative Management Chairman, study higher education governance, including the role of the State Board of Higher Education, University System office, and university presidents. The directive also provided the committee was to review constitutional and statutory provisions and consider changes to improve the current governance model.
6. As directed by the Legislative Management Chairman, study methods to improve higher education accountability, including potential accountability measures.

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 two-year colleges that offer associate and technical degrees. Each institution is unique in its mission to serve the people of North Dakota.

Total legislative appropriations for the 2011-13 biennium for higher education institutions and the University System office total $766,603,553, of which $657,785,794 is from the general fund. The following is a history of legislative appropriations for the University System since 1997:

Biennium	General Fund	Special Funds	Total
1997-99	$306,825,098	$323,595,863	$630,420,961
1999-2001	$334,449,287	$713,538,799	$1,047,988,086
2001-03	$366,953,836	$80,367,201	$447,321,037
2003-05	$364,029,938	$110,546,775	$474,576,713
2005-07	$387,157,893	$178,552,108	$565,710,001
2007-09	$472,036,237[1]	$165,419,701[1]	$637,455,938
2009-11	$593,355,047[2]	$202,764,364[2]	$796,119,411
2011-13	$657,785,794[3]	$108,817,759	$766,603,553

[1]The Legislative Assembly in 2007 provided one-time funding of $35,965,383, of which $28,382,068 is from the general fund and $7,583,315 is from the permanent oil tax trust fund, for the 2007-09 biennium.

[2]The Legislative Assembly in 2009 provided one-time funding of $69,692,152, of which $59,292,152 is from the general fund and $10,400,000 is from the permanent oil tax trust fund, for the 2009-11 biennium.

[3]The Legislative Assembly in 2011 provided one-time funding of $51,260,357 from the general fund for the 2011-13 biennium.

NOTE: The special funds amounts for the 1997-99 biennium reflect the appropriation of tuition income and the 1999-2001 biennium reflect the appropriation of tuition and local funds.

The University System reported a total degree credit headcount enrollment of 48,833 students and a total degree credit full-time equivalent (FTE) enrollment of 39,089 students in the fall 2011 enrollment report.

Higher Education Funding Models

Current University System Funding Model

The 1999-2000 Higher Education Roundtable recommended the State Board of Higher Education and the chancellor develop a long-term financing plan and resource allocation model. As a result, the board reviewed various options and adopted a long-term financing plan consisting of base operating funding, incentive funding, and capital asset funding components. The board approved changes to the long-term financing plan and resource allocation model in May 2006. The following is a description of the current long-term financing plan and resource allocation model:

- **Base operating funding component** - The base operating funding component of the long-term financing plan provides funding to each higher education institution to support core campus functions, such as instruction, research, and public service. The funding for each institution is based on the institution's current state general fund appropriation with general fund appropriation increases to address parity and equity. Parity funding is to be used to continue current programs and services, including salaries, benefits, and inflationary increases. Equity funding is to be distributed to institutions based on a funding comparison to peer institutions.
- **Incentive funding component** - The incentive funding component of the long-term financing plan includes funding for the State Board of Higher Education to support state and system priorities consistent with the goals of the Higher Education Roundtable.
- **Capital asset funding component** - The capital asset funding component of the long-term financing plan provides funding to each of the higher education institutions for maintenance and replacement of facilities and infrastructure.

Performance Funding Models

As part of the study of higher education funding methods, the committee invited representatives of the National Governors Association, National Conference of State Legislatures, State Higher Education Executive Officers Association, HCM Strategists LLC, American Institute for Research, and National Center for Higher Education Management Services to provide information to the committee regarding higher education funding reform strategies and performance funding models.

The committee learned higher education systems in several states are experiencing challenges due to changing demographics and state budget constraints. Productivity strategies are being implemented for higher education systems to increase efficiencies and improve college completion rates.

The committee learned performance funding may be used to encourage institutions to meet state priorities while increasing accountability. Performance funding methods used by other states generally include the following characteristics:

- Completion-focused;
- Simple;
- Supportive of access goals;
- Utilize accurate and consistent data;
- Developed with input from institutions; and
- Provide for a portion of total state funding.

The committee learned performance funding methods use metrics to determine the success of higher education institutions in meeting specified goals. Performance funding metrics allow stakeholders to:

- Understand student and college success.
- Identify specific challenges and opportunities for improvement.
- Review progress over time.
- Hold students, colleges, and the state accountable to the public.

Performance funding metrics focused on student completion may measure success based on progress or outcomes. Common performance funding metrics focused on student completion include the following:

Progress-Based Metrics	Outcome-Based Metrics
• Remediation entry and success • Success in first-year college courses • Credit accumulation • Retention rates • Course completion	• Degrees awarded annually • Graduation rates • Transfer rates • Time required and credits taken to complete a degree

Performance funding metrics can also be based on efficiency and effectiveness. Common efficiency and effectiveness metrics address the following areas:

- Meeting workforce needs.
- Student output relative to input.
- Return on investment.
- Quality of student learning.

University System Performance Funding Proposal

The committee received information regarding the development of a higher education performance funding method by the State Board of Higher Education. The University System's performance funding task force was created to develop a proposal for the use of performance funding measures by the University System. The task force suggested a pilot program be implemented during fiscal year 2013 without funding and use the following measures:

1. Fall semester to spring semester student retention at the institution where the student initially enrolled.

2. Fall semester to fall semester student retention at any institution within the University System.
3. The number of students awarded degrees between July 1 and June 30 of each year.

The task force suggested allocating funding for the performance funding method beginning with the 2015-17 biennium.

Tennessee Outcomes-Based Funding Method

The committee invited representatives of the Tennessee Higher Education Commission to a committee meeting to provide information regarding the Tennessee outcomes-based funding method. The committee learned Tennessee previously provided state-appropriated funding to higher education institutions based on the student enrollment at each institution. Tennessee replaced its enrollment-based funding model in 2010 with a new funding model based on outcomes. Tennessee also has a performance-based funding model that allocates a small portion of the overall higher education funding based on institution performance.

The committee learned the outcomes-based funding model identifies outcomes for which each institution is measured. The outcomes are prioritized at each institution based on institution mission, and a weighting factor is applied to each outcome based on the priority order. The outcomes provide measurements in various areas, including:

1. Student credit-hour accumulation.
2. The number of dual-enrollment students.
3. Students that successfully transfer to another institution.
4. The number of degrees awarded per 100 FTE students.
5. The number of certificates and degrees awarded.
6. Remedial education student success.
7. Workforce training activities.
8. Job placement.
9. Research activities.
10. Graduation rates.

The outcomes-based funding model uses the following methods to determine the amount of state appropriated funding allocated to an institution:

1. Identify and prioritize the outcomes for which an institution is to be measured.
2. Collect data from an academic year for each of the outcomes.
3. Award a premium for results of certain outcomes subgroups, such as low-income students that receive a degree.
4. Rescale the data for each outcomes category to make the outcome amounts comparable.
5. Apply a weight to each outcome that reflects the priority of the outcome based on the mission of the institution.
6. Multiply the scaled data for each outcomes category by the weight assigned to the category to calculate a weighted outcome.
7. Sum the weighted outcomes and multiply the result by the average faculty salary as determined by the Southern Regional Education Board. This amount is used to determine the institutions pro rata share of total higher education funding to be allocated through the formula.

Indiana Performance Funding Model

The committee invited a representative of the Indiana Commission for Higher Education to a committee meeting to provide information regarding the Indiana higher education performance funding model. The committee learned Indiana has allocated a portion of its higher education budget for performance funding distributions since 2003. The performance funding model has seven metrics that are designed to improve college completion, student success, and degree attainment. Approximately 5.1 percent of the total Indiana higher education operating budget was allocated for performance funding distributions during the 2011-13 biennium.

The committee learned only Indiana resident students are included in the performance funding measures. Indiana will use the following seven performance funding measures during the 2013-15 biennium:

1. Overall degree completion - Certificates, associate degrees, bachelor's degrees, master's degrees, and doctoral degrees awarded to resident students.
2. At-risk student degree completion - Certificates, associate degrees, and bachelor's degrees awarded to resident students that are Pell grant recipients at the time of graduation.
3. High-impact degree completion - Bachelor's degrees, master's degrees, and doctoral degrees awarded to resident students in science, technology, engineering, and mathematics (STEM)-related fields.
4. Student persistence incentive - Provides an incentive if a resident student successfully completes a set number of credit-hours at an institution.
5. Remediation success incentive - Provides an incentive to two-year institutions for resident students who successfully complete a remedial education course and then successfully complete a gateway college-level course in mathematics or English.
6. On time graduation rate - Provides an incentive for improvements in the on time graduation rate of students.
7. Institutional defined productivity measure - This measure is selected by each institution and must align with the strategic plan of the institution and focus on reducing the cost of attendance to the student. The measure must be approved by the Indiana Commission for Higher Education office.

The following schedule details which institution types use each measure:

Measure	Research Institutions	Four-Year Nonresearch Institutions	Two-Year Institutions
Overall degree completion	Yes	Yes	Yes
At-risk student degree completion	Yes	Yes	Yes
High-impact degree completion	Yes	No	No
Student persistence incentive	No	Yes	Yes
Remediation success incentive	No	No	Yes
On time graduation rate	Yes	Yes	Yes
Institutional defined productivity initiative	Yes	Yes	Yes

Success-Based Funding Method

The committee received information regarding options to implement a success-based funding method for the University System. The success-based funding method is based on the Tennessee higher education funding method and allocates funding to institutions based on measured outcomes. The funding method would replace the operations funding component of the current University System funding method. Operations funding would be appropriated to a success-based funding pool for allocations to campuses through a success-based funding formula.

Each institution would be measured on outcomes that are based on institution mission and the priorities of the state. Each outcome is ranked to provide more weight to the outcomes that reflect the priorities relating to the mission of the institution. Premiums may be awarded to outcome subgroups to encourage institutions to serve traditionally underserved student groups or to meet identified needs of the state. Potential outcomes may include:

- Student credit-hour accumulation;
- Degree completion;
- Job placements;
- Student retention;
- Workforce training provided;
- Remedial education success;
- Research and grant funding received; and
- Graduation rates achieved.

The committee learned outcomes data for North Dakota institutions can currently be collected for the number of degrees and certificates awarded, student credit-hour progression, graduation rates, and successful student transfers. Data for measures regarding job placements and workforce statistics is not readily available. Coordination would be needed between several state and federal agencies in order to obtain the data.

The committee reviewed a bill draft that would require the State Board of Higher Education to assess and evaluate options to implement a success-based funding method and to provide a report to the Legislative Management. However, the committee did not take action on the bill draft.

Governor's Task Force on Higher Education Funding Model

The committee received information regarding the recommendations of the Governor's task force on higher education funding. The committee learned the task force, which included representatives of several entities and the Vice Presidents of Finance from UND, North Dakota State University (NDSU), North Dakota State College of Science, and Minot State University, worked to develop a funding model to provide base funding to University System institutions. The model is designed to distribute funding to institutions based on the actual cost of academic instruction at different institution types.

The model calculates general fund base appropriations for an institution by multiplying a base amount per student credit-hour by the number of adjusted student credit-hours at an institution. Completed student credit-hours are adjusted for three factors to determine adjusted completed student credit-hours:

1. Categories of instruction programs (CIP) - Provides weighting for each course based on course discipline and level of instruction. Courses with high instruction costs and upper level courses receive greater weighting factors.
2. Credit volume - Provides weighting based on the number of completed student credit-hours to recognize economies of scale. Institutions that have fewer completed student credit-hours receive a higher weighting factor.
3. Physical plant requirements - Provides weighting based on the square footage of facilities at a campus. Campuses with more facilities receive a higher weighting factor.

The committee learned the funding model:

- Was developed based on current appropriations and 2009-11 biennium completed student credit-hours.
- Would not be applied to agriculture research and extension entities associated with NDSU.
- Includes a hold-harmless clause which precludes an institution from receiving less base funding than it received for the 2011-13 biennium.
- Calculates general fund appropriations only and does not include funding for auxiliary services at institutions.
- Does not calculate required tuition revenue at institutions. However, tuition revenue was used to determine the costs of educational programs as part of developing the model.

Student Fees

Background

A student fee is a charge paid by students above normal tuition rates. Fees may be charged for various purposes, including student activities, technology costs, program costs, building projects, and other campus services. State Board of Higher Education policy provides for the following types of fees:

Fee Type	Purpose	Approval Level
Student activity fee	Used to support student activities, including student clubs and organizations. Funds raised by the fee are to be administered by the student government of the institution.	Approved by student government and the institution president
University or college fee	Used to support activities that benefit the student body, including debt retirement, student union operations, and athletics	The fee is set by the institution president after receiving input from the student body.
North Dakota Student Association fee	Supports the activities of the North Dakota Student Association	Approved by the State Board of Higher Education
Application fee	Charged to students applying to an institution for enrollment in an undergraduate program, graduate program, or professional program	Approved by the Chancellor
Technology fee	Used to support campus networking or technology purposes	Approved by the Chancellor
ConnectND fee	Supports the operation of administrative, financial, and student information systems	Approved by the State Board of Higher Education
Program fees	Charged to students enrolled in specific courses. The funding is used to support programs that have exceptional and critical needs that do not receive adequate funding from other sources. The fee revenue must be allocated for the primary benefit of students enrolled in the program.	Approved by the State Board of Higher Education after receiving student input
Course fees	Charged to students enrolled in specific courses to address unique costs of the course	Approved by the institution president
Distance-learning access fee	Charged to students taking online courses	Approved by the institution president unless the fee exceeds the resident per credit tuition charge for the course which requires approval of the Chancellor
Other fees	Charged for parking, use of laptop computers, and other incidental costs necessary to facilitate the operation of the institution	Approved by the institution president

Chapter 15-10.3, as enacted by 2011 Senate Bill No. 2351, provides certain criteria for increasing student fees. The chapter provides that through June 2013 mandatory fees at an institution, other than program-specific fees, may not increase from one academic year to the ensuing academic year by more than 1 percent of the resident undergraduate tuition rate at the institution unless an exemption is granted by the State Board of Higher Education due to documented extraordinary circumstances or student demand.

An institution requesting an increase of a mandatory student fee must provide the State Board of Higher Education with the following information:

- The estimated revenues to be generated by the fee increase.
- The specific purpose to which the generated revenue will be allocated.
- Other anticipated tuition and fee increases.
- A delineation of fee increases during the preceding five-year period and the revenues collected as a result of each increase.
- The extent to which students were allowed to participate in the decisionmaking process that preceded and resulted in the request for a fee increase.
- The approximate number of students that would be assessed the fee each year.

The State Board of Higher Education is to review the information provided and approve or disapprove the request for the fee increase.

Chapter 15-10.3 also requires the State Board of Higher Education to publish information on its website regarding student fees charged by institutions. The information is to include the amount of mandatory fees each institution charges, including a breakdown of the fees by purpose or service; the amount of program-specific fees that each institution charges; and the amount of fees for optional purposes or services that each institution charges, including a breakdown of the fees by purpose or service. As part of this requirement, the University System has developed a college cost calculator tool that details total student charges at each institution, including program and course fee costs. The committee received a demonstration of the college cost calculator tool, including the various components used to determine total college costs.

Student Fee Charges and Collections

The committee learned institutions charge university/college fees and student activity fees to support various student activities, student support services, and related facilities. Institutions also charge program and course fees for specific program or course costs.

The committee learned mandatory fees are charged to all students regardless of which academic program or courses the student is enrolled. The committee reviewed the following schedule summarizing mandatory student fee charges at each institution during the 2011-12 academic year:

	Mandatory Student Fee Charges (Based on Full-Time Student Charges - 2011-12 Academic Year)			
	ConnectND Fee[1]	North Dakota Student Association Fee[2]	Technology Fee[3]	University or College Fee[4]
Bismarck State College	$162	$0.72	$120	$360
Lake Region State College	$162	$0.72	$200	$480
Williston State College	$162	$0.72	$280	$613
University of North Dakota	$162	$0.72	$100	$1,036
North Dakota State University	$162	$0.72	$165	$712

	Mandatory Student Fee Charges (Based on Full-Time Student Charges - 2011-12 Academic Year)			
	ConnectND Fee[1]	North Dakota Student Association Fee[2]	Technology Fee[3]	University or College Fee[4]
North Dakota State College of Science	$162	$0.72	$100	$290
Dickinson State University	$162	$0.72	$144	$887
Mayville State University	$162	$0.72	$990	$557
Minot State University	$162	$0.72	$120	$892
Valley City State University	$162	$0.72	$998	$492
Dakota College at Bottineau	$162	$0.72	$144	$430

[1]The State Board of Higher Education requires each institution to charge a fee of $81 per semester to each full-time student for costs related to ConnectND information systems.

[2]State Board of Higher Education policy requires each institution to charge a fee of three cents per credit-hour, up to a total of 12 credit-hours per semester, to support the activities of the North Dakota Student Association.

[3]State Board of Higher Education policy allows institutions to charge a fee to support campus networking and technology purposes. The fee must be approved by the Chancellor.

[4]State Board of Higher Education policy allows institutions to charge an institution fee to support activities that benefit the student body, including debt retirement, student union operations, student organizations, and athletics. The fee is approved by the institution president.

The committee reviewed the following schedule which details the individual charges included in the mandatory university/college fee at each institution:

2011-12 Annual University/College Fees and Student Government Fees (Full-Time Student Rate)		
Institution	Fee	Fee Amount
Bismarck State College	College fee	$264.00
	Wellness center fee	96.00
	Total	$360.00
Lake Region State College	Student activity fee	$256.00
	Facilities usage fee	224.00
	Total	$480.00
Williston State College	College fee	$452.20
	Activity fee	161.00
	Total	$613.20
University of North Dakota	Student activity fee	$756.96
	Wellness center fee - Bond repayment	109.44
	Wellness center fee - Operations	139.44
	McCannel Hall renovation fee	30.00
	Total	$1,035.84
North Dakota State University	Student activity fee	$261.60
	Student union expansion	92.40
	Wellness center fee and addition	160.00
	Student health service fee	114.00
	Career service fee	44.00
	Library fee	39.84
	Total	$711.84
North Dakota State College of Science	Athletics	$91.00
	Clubs	17.28
	Drama	7.98
	Campus activities board	19.96
	Music	13.54
	Student Senate	27.30
	Student center	16.80
	Student recreation	7.28
	Workout facility fee	30.00
	Health service fee	58.80
	Total	$289.94
Dickinson State University	University fee	$628.50
	Student government activity fee	138.00
	Badlands Activities Center fee	120.00
	Total	$886.50
Mayville State University	University fee	$367.50
	Student government fee	84.00
	Wellness center operations fee	105.00
	Total	$556.50
Minot State University	Athletics	$160.80
	Student health fee	70.00
	Placement	52.00
	Health and Wellness Center	271.94
	Fitness center	90.00
	University endowment	3.00
	Activity fee	244.68
	Total	$892.42
Valley City State University	University fee	$290.00
	Health fee	60.00
	Student activity fee	132.00
	Fitness center fee	10.00
	Total	$492.00
Dakota College at Bottineau	Activity fee	$320.00
	Student activity fee	132.00
	College fee	60.00
	Total	$430.00

The committee reviewed the following schedule detailing total mandatory student fee collections at each institution during the 2010-11 academic year:

	Total Mandatory Student Fee Collections (2010-11 Academic Year)
Bismarck State College	$1,957,126
Lake Region State College	689,904
Williston State College	356,359
University of North Dakota	15,834,087
North Dakota State University	13,199,405
North Dakota State College of Science	879,238
Dickinson State University	1,740,027
Mayville State University	1,007,364
Minot State University	3,092,708
Valley City State University	1,446,380
Dakota College at Bottineau	290,939
Total	$40,493,537

Performance Audit on Student Fees

The committee received information regarding the State Auditor's office performance audit report on student fees. The objective of the performance audit was to determine if fees are appropriately established and used by NDSU and UND.

The performance audit contained 24 recommendations. Based on the performance audit, the State Auditor's office determined NDSU and UND inappropriately used fee money. The audit recommends the State Board of Higher Education ensure an effective process for fee establishment, monitoring, and use of fee money.

The committee reviewed responses from NDSU and UND regarding the performance audit. The institutions responded that they will continue to review, clarify, and improve campus policies and practices relating to the use of fees. The University of North Dakota is planning to address the recommendations identified in the performance audit report as follows:

- Strengthen the process for documenting travel expenses.
- Establish written guidelines requiring departments to file reports annually with the budget office on program and course fee cash balances.
- Conduct a comprehensive review of all course and program fees to identify areas where improvement can be made to ensure appropriate monitoring of fees.
- Upgrade training of administrative staff in all university departments and units on issues related to management of student fees.

Developmental Education

Background

Developmental (remedial) education courses at higher education institutions are designed to prepare students to successfully complete regular academic courses. State Board of Higher Education policy defines developmental education courses as University System courses numbered less than 100 as well as English 100 and Mathematics 101 and 102.

Students may choose to enroll in developmental education courses or may be required to complete a developmental education course based on the results of a standardized test score. Effective with the fall 2012 semester, State Board of Higher Education policy requires students to enroll in an appropriate developmental education course if the student has not achieved an ACT English subtest score of 19 or higher or an ACT mathematics test score of either 21 or 22 or higher, depending on the institution where the student is enrolled. Board policy also recommends students achieve an ACT reading subtest score of 21 or higher and an ACT science score of 24 or higher. These score levels generally provide that a student has a 75 percent chance of earning a college course grade of "C" or higher and a 50 percent chance of earning a college course grade of "B" or higher.

The State Board of Higher Education developed a plan in 2010 to address developmental education which is summarized as follows:

- Continue to work with other educational and governmental entities to define expectations for students at all grade levels.
- Explore options for students' assessment tests.
- Implement a definition of remedial courses and develop uniform placement standards by fall 2012.
- Encourage campuses to develop partnerships, including community colleges meeting the remedial needs of students on university campuses.
- 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 education courses.

High School Graduation Requirements

The committee received information regarding high school graduation requirements. The committee learned students must complete a minimum of 22 credits, including the following curriculum requirements, in order to receive a high school diploma:

1. Four units of English language arts from a sequence that includes literature, composition, and speech.
2. Three units of mathematics.
3. Three units of science, including one unit of physical science, one unit of biology, and one unit (or two half units) of any other science.
4. Three units of social studies, including one unit of United States history, one unit of problems of democracy, or a half unit of United States government and a half unit of economics, and one unit (or two half units) of any other social studies which may include civics, civilization, geography, and history, multicultural studies, North Dakota studies, psychology, sociology, and world history.
5. One unit of physical education or a half unit of physical education and a half unit of health.
6. Three units of foreign languages, Native American languages, fine arts, or career and technical education courses.
7. Any five additional units.

Some high schools in the state require a student to complete more than 22 credits in order to receive a high school diploma. The following schedule details the number of high schools that require 22 or more credits for a student to graduate:

Number of Credits Required to Graduate From High School	Number of High Schools With the Credit Requirements
22	119
22.5	2
23	11
24	40
25	2
26	3

University System Admissions Standards

The committee received information regarding University System admissions standards. The committee learned State Board of Higher Education policy provides the following admissions policies for two-year institutions which include certificate programs, diploma programs, and associate's degree programs:

- A beginning freshman applicant who is a high school graduate may be admitted to any two-year institution. Institutions may establish program admissions requirements that are in addition to the general admissions requirements.
- General educational development (GED) test may be used to satisfy the high school graduation requirement.
- Applicants that are 17 years of age or older may be admitted to technical programs if the applicant successfully meets program requirements. It is recommended, but not required, for applicants to have a high school diploma.

State Board of Higher Education policy provides the following requirements for admission to four-year institution baccalaureate programs:

- The completion of certain high school curriculum, including four units of English, three units of mathematics (Algebra I and above), three units of laboratory science (including at least one unit each in at least two of the following courses--biology, chemistry, physics, or physical science), and three units of social studies (excluding consumer education).
- Students are recommended to also complete an Algebra II course and two units of a single classical or modern language, including American Sign Language and Native American languages.
- International students shall be considered for admission if their high school preparation is judged equivalent to the required high school curriculum and the student meets English language proficiency requirements.
- Students aged 25 or older on the first day of class are exempt from the high school curriculum requirements. In addition, institutions may enroll a certain percentage of students that do not meet the high school curriculum requirements.
- Institutions may establish additional criteria beyond the high school curriculum requirements.

The committee received information regarding changes to admissions standards approved by the State Board of Higher Education. Those changes are detailed later in this report in the section discussing the State Board of Higher Education pathways to student success plan.

The committee learned the University System is working with the Department of Public Instruction to reduce the number of students that require developmental education. Examples of initiatives to reduce the number of developmental education students include the use of optional high school curriculum, using scholarships to promote academic rigor, and increasing access to dual-credit courses.

Student Enrollment in Developmental Education Courses

The committee reviewed the following table which summarizes the number of students enrolled in developmental education courses at each higher education institution during the fall 2011 semester:

Students Enrolled in Developmental Education Courses - Fall 2011			
	Resident Students	Nonresident Students	Total
Bismarck State College	552	56	608
Dakota College at Bottineau	96	113	209
Dickinson State University	53	64	117
Lake Region State College	146	45	191
Mayville State University	24	49	73
Minot State University	154	59	213
North Dakota State College of Science	293	295	588
North Dakota State University	177	285	462
University of North Dakota	83	112	195
Valley City State University	0	0	0[1]
Williston State College	89	72	161
Total	1,667	1,150	2,817

[1]Valley City State University developmental education courses were provided through other institutions or through outside programs.

The students may enroll in multiple developmental education courses. The 2,817 developmental education students enrolled in a total of 3,163 developmental education courses. The following schedule details the enrollment in developmental education courses at each institution by academic area during the fall 2011 semester:

Fall 2011 Developmental Education Course Enrollments						
	Course Academic Area					
	Academic Skills Course	Education	English	Language	Mathematics	Total
Bismarck State College	364	0	0	0	363	727
Dakota College at Bottineau	126	0	50	0	88	264
Dickinson State University	0	0	34	0	97	131
Lake Region State College	115	0	0	0	119	234
Mayville State University	0	11	54	0	54	119
Minot State University	0	0	0	0	213	213
North Dakota State College of Science	514	0	0	0	121	635
North Dakota State University	0	0	0	53	410	463
University of North Dakota	0	0	0	0	195	195

Fall 2011 Developmental Education Course Enrollments						
	Course Academic Area					
	Academic Skills Course	Education	English	Language	Mathematics	Total
Valley City State University	0	0	0	0	0	0
Williston State College	91	0	0	0	91	182
Total	1,210	11	138	53	1,751	3,163

Higher Education Governance

Background

The State Board of Higher Education consists of eight voting members that are appointed by the Governor. The Governor appoints a member after receiving a list of three names agreed upon by at least four members of a selection committee consisting of the president of the North Dakota Education Association, the Chief Justice of the Supreme Court, the Superintendent of Public Instruction, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The Governor's appointment is subject to Senate confirmation.

The State Board of Higher Education controls and administers the institutions of the University System. Various constitutional and statutory provisions authorize board activities and provide legislative directives.

Governing Board Types

The committee learned higher education boards can be governing or coordinating. A higher education governing board manages and controls certain public institutions of higher education. Some governing boards are constitutionally mandated while others are established statutorily. The duties of governing boards vary and may include preparing budgets, allocating resources, establishing personnel policies, managing assets, approving programs, and hiring chief executives for institutions.

The committee reviewed the following table prepared by the Ohio Board of Regents staff that lists potential strengths and weaknesses of governing boards:

Potential Strengths	Potential Weaknesses
Engaged in statewide strategic planning	Central planning can cause a slow response to workforce and business needs
Responsive to state priorities	Can evolve into large and inefficient bureaucracies
Guards against duplication	Can have political influence on micro issues at the institution level
Ensures program quality through program approval methods	Often lacks necessary data to assess institutional performance
Is able to address articulation and transfer issues	Tense relationships can develop between professional leaders and state government
	May become weighed down with internal concerns

A higher education coordinating board is a single agency other than a governing board that has the responsibility for the statewide coordination of certain higher education policy areas. Coordinating boards generally do not manage institutions and are not responsible for hiring or setting the compensation of institution chief executives. Coordinating boards typically focus more on the needs of the state rather than the needs of the institutions. Some coordinating boards do have the authority to regulate certain areas, such as approving new programs at institutions.

The following table prepared by the Ohio Board of Regents staff lists potential strengths and weaknesses of higher education coordinating boards:

Potential Strengths	Potential Weaknesses
Quick to respond to market needs	State priorities can be hindered by local lobbying efforts
Engaged in statewide strategic planning	May be perceived as powerless if consensus is not achieved
Generally responsive to state priorities	Statewide initiatives can be hindered without the voluntary cooperation of all institutions
Private sector usually a direct partner	Difficult to reverse enacted policies or make policy changes
Sensitive to consumer needs	Institutional decisions at the local level may be in direct conflict with views at the state level
Builds consensus to make change, particularly with budgeting, program review, and articulation	

Alternative Higher Education Governance Structure

The committee received information regarding an alternative governance structure for the University System. The alternative governance structure would not have a board of higher education but would create a department of higher education. The alternative governance structure would include:

- A department of higher education to oversee public higher education institutions.
- A director of higher education appointed by the Governor for a term of three years and removable by the Governor for cause. The director would have a doctoral degree and be familiar with higher education delivery and administration.
- An 11-member higher education council to provide advice and guidance to the director of higher education regarding various higher education issues, including academic standards, accountability, budgetary issues, operations matters, and legislative affairs.

Higher Education Accountability Measures

Background

Section 15-10-14.2, as enacted by the Legislative Assembly in 1989 with approval of House Bill No. 1618, provides for certain reporting requirements of the State Board of Higher Education. The section as originally enacted required the board to provide biennial reports

regarding the status of higher education in the state and measures the board planned to take to ensure that the University System would address the needs of the state. The 1999-2000 Higher Education Committee recommended and the Legislative Assembly approved 2001 Senate Bill No. 2041 to amend Section 15-10-14.2 to eliminate the previous reporting requirements and provide new requirements. The new requirements require the board to adopt a strategic planning process and to develop a strategic plan to define and prioritize University System goals and objectives. The board is also required to provide an annual performance and accountability report regarding performance and progress toward the goals outlined in the University System's strategic plan. In addition, the board is to report to the Legislative Assembly regarding the status of higher education in the state.

The 2001, 2003, 2005, 2007, and 2009 Legislative Assemblies approved sections of legislative intent regarding certain financial and nonfinancial performance measures to be included in the report.

University System Accountability Measures Report

The committee received an overview of the University System's December *2011 Accountability Measures Report.* The following are selected measures from the report:

Measure	Status/Result
How well is North Dakota's workforce training system responding to the training needs of employers?	In fiscal year 2011, 1,547 businesses were served by TrainND and 14,593 employees were trained.
What is the level of research expenditures in higher education?	Research expenditures grew by 22 percent between fiscal year 2007 and fiscal year 2011 with $207 million in research expenditures in fiscal year 2011.
Are graduates of North Dakota colleges and universities finding employment in the state?	Of the 7,884 University System graduates in 2009, 4,972 (63.1 percent) were employed by North Dakota employers one year after graduation.
Are University System students completing their degrees?	Based on adjusted graduation rates from all institutions, 46.9 percent of two-year institution students completed degrees in three years, and 64 percent of four-year institution students completed degrees in six years.
How affordable are University System institutions to all families?	On average, 15.2 percent of the 2010 median North Dakota family income was needed to pay for college at four-year institutions after grant aid was deducted. This compares to a national average of 17.2 percent. On average, 9.3 percent of family income was needed to pay for college at two-year institutions.
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 2010-11, undergraduate and graduate students in North Dakota borrowed an average of $4,410 compared to the national average of $4,785. Maine had the lowest average at $4,136.
What proportion of the 25-year-old to 34-year-old population has an associate's degree or higher?	Approximately 50.5 percent of North Dakota's 25-year-old to 34-year-old population has an associate's degree or higher. The national average is 39 percent.
To what extent do North Dakota taxpayers provide financial support for University System students?	The average per capita general fund appropriation for the 2009-11 biennium was $813, an increase of 37 percent since the 2001-03 biennium.
How much state funding and tuition revenue is spent for each degree and certificate awarded by University System institutions?	The average cost per degree awarded by University System four-year institutions in 2009-10 was $60,897, which is above the national average of $56,683. The 2009-10 average cost per two-year institution degree or certificate awarded was $27,742, which is below the national average of $34,256.

Tuition Waivers

The committee received information regarding tuition waivers granted by University System institutions. The committee learned full or partial tuition waivers were provided to 9,164 students, or 16.3 percent of the total University System headcount enrollment, during the 2010-11 academic year. Of the 9,164 students that received a waiver, 2,366 students received a full tuition waiver and 6,798 students received a partial tuition waiver. The following schedule details the number of tuition waivers provided, the number of students receiving a tuition waiver, and the value of tuition waivers provided by each institution during the 2010-11 academic year:

Institution	Number of Tuition Waivers Provided	Number of Students Receiving a Tuition Waiver[1]	Value of Tuition Waivers Provided
Bismarck State College	289	279	$182,478
Dakota College at Bottineau	76	70	83,804
Dickinson State University	687	651	2,919,121
Lake Region State College	245	241	184,198
Mayville State University	131	119	177,026
Minot State University	1,208	1,181	1,363,593
North Dakota State College of Science	1,137	1,129	1,055,958
North Dakota State University	3,066	2,939	15,227,496
University of North Dakota	2,251	2,050	8,651,291
Valley City State University	244	210	462,776
Williston State College	296	295	112,328
Total	9,630	9,164	$30,420,069

[1]Reflects the unduplicated headcount total number of students receiving a full or partial tuition waiver. Some students received more than one partial tuition waiver.

The committee learned it is difficult to compare the amount of tuition waivers provided by each University System institution. As an example, the State Board of Higher Education's approved tuition rate at NDSU for international students is equal to 267 percent of the resident student rate while the approved international student tuition rate at other institutions may be equal to the resident tuition rate. If NDSU charges an international student the resident tuition rate, a tuition waiver must be recorded. However, no tuition waiver is recorded at the institution that has an approved international student tuition rate equal to its resident tuition rate. The committee learned the value of tuition waivers provided by NDSU would decrease by $6.1 million annually if the approved nonresident tuition rate was set at 150 percent of the resident tuition rate. If the university's nonresident approved tuition rate was the same as the resident tuition rate, the value of tuition waivers provided by the university would decrease by $8.1 million annually.

The committee learned tuition waivers are used by research institutions for five major strategic functions that include:

1. Acquisition of incremented tuition revenue.
2. Acquisition of student talent.
3. Recognition of select groups, such as veterans.
4. Support of the institutional mission for instruction.
5. Support of the institutional mission for research.

Pathways to Student Success Plan

The committee received information regarding the University System's pathways to student success plan. The committee learned the plan provides for the following:

- Accessibility - Establish admissions standards that reflect the distinctive missions of institutions.
- Quality - Create a North Dakota High School to College Readiness Report to provide information on student performance at the postsecondary level.
- Affordability - Expand the current financial aid program to include more needs-based aid as well as support for adult learners.
- Learning - Provide all remedial education through two-year institutions and provide all dual-credit courses through two-year institutions and four-year regional universities.
- Accountability - Establish a standard tuition rate model for nonresident students at all institutions, limit the amount of tuition waivers an institution may provide, implement a per credit tuition model, and increase transparency in student fees.

The committee learned the plan will implement institution admissions standards that are based on a student's ACT test score, high school grade point average, number of high school core courses completed, and residency. Students who do not meet admissions requirements for a research or regional university may attend a community college and apply to transfer to a university after successfully completing 30 credits and maintaining a 2.5 grade point average.

The committee learned the plan will implement the following tuition rates for nonresident students at all institutions:

Residency	Tuition Rates at Community Colleges and Regional Universities	Tuition Rates at Research Institutions
Contiguous states and Canadian provinces (excluding Minnesota)	1.25 times the resident rate	1.5 times the resident rate
Midwest Higher Education Compact and Western Interstate Commission for Higher Education reciprocity agreements	1.5 times the resident rate	1.5 times the resident rate
Other nonresident students, including international students	1.75 times the resident rate	1.75 times the resident rate
Minnesota	Based on reciprocity agreement	Based on reciprocity agreement

The committee learned the plan will implement a per credit tuition model at all institutions. Community colleges will charge three levels of tuition rates based on the cost of the program in which the student is enrolled. Tuition waivers, with the exception of waivers for student-athletes, employees, and employee dependents, will be limited to 5 percent of total prior years' undergraduate tuition at each institution.

Other Information Received

Higher Education Impact on State Workforce Needs

The committee received information from a representative of the Education Commission of the States regarding the ability of higher education to meet the workforce and economic needs of the state. By the year 2018, 70 percent of jobs in North Dakota will require some postsecondary education. Focusing on college completion rather than access may help address the needs of the state.

The committee learned the following seven strategies can be used to increase college completion rates and address the workforce and economic needs of the state:

1. Reduce the number of students entering college that need remedial education and decrease the amount of time that students spend in remedial education courses;
2. Encourage college completion for adults that previously completed college courses but do not have a degree;
3. Create structured, cohort-based programs that provide students with a consistent schedule and a specific program completion point;
4. Direct students into a program of study;
5. Develop career pathways through partnerships with employers to align student skills with workforce needs;
6. Use student incentives to encourage degree completion; and
7. Use technology-based comprehensive advising to ensure student success.

State Board of Higher Education's Maximizing Results Through Efficiencies Initiative

The committee received information from a representative of the State Board of Higher Education regarding the board's Maximizing Results Through Efficiencies initiative. The initiative is designed to allow the University System to meet the needs of students and the state while improving education quality, access, and affordability. The initiative is not intended to reduce budget levels but to improve the University System's responsiveness to state needs and to demonstrate the University System's commitment to achieving those needs. Objectives of the initiative include:

1. Improving student retention and success.
2. Improving student access to programs and services.
3. Improving quality of student experience.
4. Controlling student costs.
5. Reducing complexity across the system and within individual campuses.
6. Providing effective and efficient delivery of instructional and administrative services.
7. Reinvesting savings into the system to enhance student success, strengthen programs tied to state needs, and retain high-quality faculty and staff.

The following schedule details selected proposed efficiencies included in the plan:

Initiative	Selected Efficiencies
Cost-effective information technology system	Develop a learning management system with a consistent software approach and shared curriculum content
	Implement lecture capture software
	Develop a document imaging scanning system with common software and hosting
	Develop a unified communication system to deliver a consistent set of services and integrate various communications components
Academic process	Reengineer general education curriculum to support collaborative processes
	Review low-enrollment programs for potential elimination
	Expand the availability of program credits through prior learning experiences
	Align high school graduation requirements with preparation for college and work
	Improve graduation rates by establishing differentiated admissions requirements for regional and research universities
Other	Consolidate certain legal services into one office
	Engage independent architect and engineer review services to analyze state funding capital project requests

The committee learned the State Board Higher Education is in the process of implementing several of the efficiency components.

University System 2013-15 Biennium Budget Request

The committee received information from representatives of the University System regarding the State Board of Higher Education's budget request for the 2013-15 biennium. The schedule below provides information regarding general fund increases requested:

2013-15 University System General Fund Budget Request (Excludes Agriculture Research and Extension Entities)

	Institutions and University System Office	Student Financial Aid Programs	UND School of Medicine and Health Sciences	Forest Service	Total
2011-13 ongoing funding	$516,069,074	$38,745,920	$47,747,971	$3,962,472	$606,525,437
2013-15 biennium requested increase	73,602,658[1]	1,317,925	11,175,837[1]	598,820[1]	86,695,240
2013-15 biennium ongoing funding request	$589,671,732	$40,063,845	$58,923,808	$4,561,292	$693,220,677
Percentage change in requested ongoing funding	14.3%	3.4%	23.4%	15.1%	14.3%
One-time funding requests	$107,776,463	$0	$38,500,500	$785,000	$147,061,963
FTE position increase	150.5	0.0	0.0	2.0	152.5

[1]Does not include funding for employee salary or health insurance increases.

The requested 2013-15 biennium ongoing general fund increase includes funding of $26,405,691 for cost-to-continue items and inflationary increases. The remaining $60,289,549 requested general fund increase is for system and campus initiatives to address state priorities. The $147,061,963 of one-time funding requests is related to capital projects and repairs.

The committee learned the budget request includes funding for the following initiatives:

- Improvements to security at campuses - $5.5 million and 32.8 FTE positions.
- Establishment of a UND College of Engineering and Mines branch location in the western part of the state - $10 million.
- Development of a genomics and bioinformation linking initiative at NDSU - $10 million.
- Further development of the Theodore Roosevelt Center at Dickinson State University - $875,133 and 5.5 FTE positions.
- Expansion of the needs-based financial aid program to provide assistance to part-time students - $288,660.

The $147,061,963 of one-time funding requests is related to capital projects, repairs, and planning, including the following:

- Renovate and construct an addition to the UND School of Medicine and Health Sciences facility - $38.5 million.

- Construct a communications and fine arts center at Bismarck State College - $20.4 million.
- Replace a gymnasium facility at Mayville State University - $5.8 million.
- Construct a STEM classroom and laboratory building at NDSU - $29.6 million.
- Address deferred maintenance needs at campuses - $10 million.
- Conduct a space utilization study to identify space needs at each institution for classrooms, offices, and laboratories - $1 million.

STEM Education

The committee received information regarding STEM education initiatives. The committee learned the North Dakota STEM network is being used to connect North Dakota stakeholders and increase cooperation in order to provide opportunities for students in STEM fields. Students who gain STEM skills contribute to a competitive and productive workforce.

The goals of the North Dakota STEM network include:

- Pursuing policies and funding to support STEM education.
- Increasing high school graduation rates and increasing the number of graduates that are prepared to pursue STEM certificates, degrees, and careers.
- Using the engineering design process to build a network that connects STEM assets and increases awareness of STEM education.
- Supporting educators in STEM-critical areas.

NDSU Tuition Rate Increase

The committee received information regarding the tuition rate increase approved by the State Board of Higher Education for NDSU for the 2011-12 academic year. North Dakota State University received approval from the State Board of Higher Education to increase tuition by 8.8 percent for the 2011-12 academic year. The committee learned NDSU has experienced enrollment growth in the past 11 years which has resulted in increased institutional costs and the need for additional funding. A 2.5 percent tuition rate increase at NDSU for the 2011-12 academic year was estimated to generate $1.6 million of revenue annually. The 8.8 percent tuition rate increase was estimated to generate $5.4 million of revenue annually, or $4.1 million more than the 2.5 percent increase. The State Board of Higher Education did not approve any tuition increases for NDSU for the 2012-13 academic year.

Campus Needs Resulting From Oil and Gas Development

The committee received information regarding campus needs at certain University System institutions due to the impact of oil and gas development. Additional funding is needed at affected institutions in the western part of the state to address security concerns on campus and to increase faculty and staff salaries to remain competitive with local salary levels.

The committee learned the cost of housing in oil and gas development areas affect students, faculty, and staff members. Some institutions currently have a student housing shortage, and many dormitories have more students living in them than the number for which they were originally designed. Many faculty members are unable to move their families due to the housing shortages. Approximately 15 percent of Williston State College employees currently live on campus.

The committee conducted a bus tour of the Williston area. The committee toured several areas of Williston affected by oil and gas development activities, including the east industrial parks, water treatment facilities, medical facilities, and residential and commercial development to the west and north of the city.

Enrollment Information

The committee received various University System enrollment statistics. A total of 37,122 University System students during the fall of 2011 had an on-campus presence by taking at least one course in a traditional classroom setting, and 11,683 students did not have an on-campus presence. The following schedule details University System degree credit headcount enrollment in distance education courses by delivery method:

Distance Education Delivery Method	Fall 2011 Enrollment
Face-to-face off campus[1]	4,409
Correspondence	334
Internet-based	15,732
Duplicated total[2]	20,475

[1]Courses taught in a traditional classroom setting at an off-campus location.

[2]A student may be counted more than once if a student takes courses using different delivery methods. The unduplicated total of distance education students is 18,958.

The committee received the following information detailing the residency of students taking only online courses at each University System institution:

Students Enrolled Only in Online Courses - Fall 2011			
	Resident Students	Nonresident Students	Total
Bismarck State College	564	651	1,215
Dakota College at Bottineau	99	49	148
Dickinson State University	297	66	363
Lake Region State College	341	122	463
Mayville State University	106	87	193
Minot State University	415	142	557
North Dakota State College of Science	246	80	326
North Dakota State University	233	355	588
University of North Dakota	782	1,569	2,351
Valley City State University	223	166	389
Williston State College	147	64	211
Total	3,453	3,351	6,804

The committee received the following schedule detailing graduate program enrollment by institution:

University System Graduate Program Headcount Enrollment (Fall 2011)	
Institution	Enrollment
Mayville State University	21
Minot State University	309
North Dakota State University	2,229
University of North Dakota	2,723
Valley City State University	161
Total	5,443

The committee received information regarding students enrolled in dual-credit courses. A high school student must receive permission from the student's high school superintendent in order to enroll in a dual-credit course. Instructors of dual-credit courses must meet the employment qualifications of an adjunct faculty member at the higher education institution. The following schedule details the number of dual-credit students enrolled at each University System institution:

Institution	Dual-Credit Enrollments (Fall 2011)
Bismarck State College	481
Dakota College at Bottineau	100
Dickinson State University	294
Lake Region State College	678
Mayville State University	129
Minot State University	188
North Dakota State College of Science	141
North Dakota State University	0
University of North Dakota	0
Valley City State University	41
Williston State College	273
Total	2,325

The committee also received information regarding student enrollment reporting issues at Dickinson State University. The University System conducted an internal audit of enrollment reporting at Dickinson State University. The audit determined that there were discrepancies in enrollment reporting as a result of improper conduct of university employees.

University System Information Technology

The committee received information regarding the University System's information technology function. The committee learned the system information technology services program received a $35.5 million general fund appropriation for the 2011-13 biennium and has a total biennial budget of $51.5 million. The program currently has 125.5 FTE positions.

The committee received information regarding the future needs of the University System's information technology services. Key issues for the University System include the implementation of lecture and content capture software, ensuring institutions have adequate bandwidth, and continuous help desk coverage.

The committee received an update on the status of the joint University System and UND information technology building project. A project steering committee was appointed that consists of representation from campuses, the University System office, and the State Board of Higher Education. The steering committee is reviewing the scope of the project as well as a project timeline. The proposed project includes the construction of an office building to house information technology staff and the renovation of an existing building for data center equipment. The project is estimated to cost approximately $17.5 million with $12.5 million provided from a general fund appropriation and $5 million available from efficiencies and one-time information technology savings. The joint information technology building is expected to be completed in 2013.

State Board of Higher Education Lawsuit Challenging Legislative Authority

The committee received information regarding a lawsuit filed by the State Board of Higher Education challenging the authority of the Legislative Assembly to enact policies affecting higher education institutions. The lawsuit claimed the only role of the Legislative Assembly in relation to higher education institutions is to provide appropriations. The lawsuit also brought into question the authority of the Legislative Assembly to enact policies that affect the institutions of higher education.

The lawsuit was filed after a group of citizens submitted a petition to the Secretary of State on February 7, 2012, to refer 2011 Senate Bill No. 2370 which repealed Section 15-10-46. Section 15-10-46 was enacted by the Legislative Assembly in March 2011 and required UND athletic teams to be known at the "Fighting Sioux." The Attorney General filed an action with the North Dakota Supreme Court on behalf of the State Board of Higher Education to declare Section 15-10-46, as originally passed by the Legislative Assembly in March 2011, as being unconstitutional and to prohibit the Secretary of State from allowing the citizen referral measure to be placed on the June 2012 primary election ballot. The Legislative Management retained counsel for the legislative branch in the case to defend the legislative branch's constitutional authority. On April 3, 2012, the North Dakota Supreme Court issued an opinion in which it declined to address constitutional issues or enjoin the Secretary of State from placing the referral measure on the June 2012 primary election ballot. The citizen referral measure was placed on the ballot for the June 2012 primary election. However, the referral measure failed to pass and the State Board of Higher Education retired the Fighting Sioux nickname and logo.

Other Miscellaneous Information Received

The committee received other reports and information, including information on:

- Common course numbering at University System institutions.
- Unrestricted net assets of University System institutions.
- Admissions standards at NDSU.
- The accreditation of teacher education programs
- North Dakota State University student success tuition model.
- The activities of the North Dakota Experimental Program to Stimulate Competitive Research (EPSCoR) program.

Recommendations

The committee recommends Senate Bill No. 2032 to implement certain accountability measures for the University System. Section 15-10-14.2 requires the University System to provide a performance and accountability report. The bill amends the section to require the report to contain the following information:

1. Data regarding fall semester to the subsequent spring semester student retention at the institution where the student initially enrolls;
2. Data regarding fall semester to the following fall semester student retention at any institution within the University System;
3. Data regarding the number of students awarded degrees, certificates, or diplomas at each institution between July 1 and June 30 of each year; and
4. Information regarding each institution's progress in meeting the implementation steps and timelines as outlined in the University System's strategic plan.

STATEWIDE LONGITUDINAL DATA SYSTEM UPDATE

Section 15.1-02-18 establishes a Statewide Longitudinal Data System Committee. Membership of the committee consists 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 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 is to provide operational oversight for information-sharing activities and make recommendations for and provide oversight of information-sharing budgets. The committee may authorize studies to benefit and improve workforce training and education.

The Statewide Longitudinal Data System Committee is to provide a report on the status of the system to the interim Information Technology Committee and interim committees that review education and economic development issues. The report must include recommendations for further development, cost proposals, proposals for legislation, and data sharing governance.

Information Received

The committee received updates from representatives of the Information Technology Department regarding the activities of the Statewide Longitudinal Data System Committee. The committee learned the statewide longitudinal data system will be used to compile data from various sources for analysis. The system may be used to link a student's education and workforce data. However, there are several layers of security to protect student information stored in the system. The North Dakota Lead Center is providing statewide longitudinal data system training to elementary and secondary schools.

The committee learned the Department of Public Instruction was awarded a federal grant of approximately $5 million for the elementary and secondary education portion of the system. Through September 2012, $2,571,427 of the funding has been spent and the project portion is 7.3 percent under budget and on schedule. The overall project, which affects multiple project initiatives, is 87 percent under budget but 10 percent behind schedule as of September 2012.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES ADVISORY COUNCIL REPORT

Section 15-52-04 provides that the Legislative Council receive a biennial report from the UND 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. Recommendations for implementing strategies through the School of Medicine 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 address 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 UND 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 UND Center for Rural Health, and the Dean of the School of Medicine.

Report

The committee received a report from representatives of the UND School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the school. The committee learned the Health Care Workforce Initiative is focusing on reducing disease burden, enhancing the retention of medical school graduates in the state, and training more health care providers. The first phase of the initiative, which is currently in progress, provides for eight additional medical students per medical school class. The second phase of the initiative, which will be

considered by the Legislative Assembly in 2013, would add an additional eight medical students per class.

The committee learned the current School of Medicine facility is unable to accommodate the increase in students. The existing facility was constructed in 1952 as a hospital and consists of 380,000 square feet which includes the original facility and additions. The design of the current facility creates an inefficient use of space. The advisory council reviewed the following three options to expand the facility and recommends Option 3:

	Description	Estimated Cost
Option 1	Construct an addition of 80,000 square feet and renovate 42,300 square feet of existing space	$38.5 million
Option 2	Construct an addition of 169,300 square feet and renovate 48,300 of existing space	$68.3 million
Option 3	Construct a new facility to provide 376,812 square feet of space	$124 million

NORTH DAKOTA CAREER AND TECHNICAL EDUCATION AND ACADEMIC SCHOLARSHIPS

The Legislative Assembly in 2009 enacted legislation to create the career and technical education and academic scholarship programs. The legislation established eligibility criteria for the scholarship programs in Chapter 15.1-21, and the criteria were subsequently adjusted by the Legislative Assembly in 2011. The current eligibility requirements provide that a student must be a resident of the state and meet the following program requirements for one of the programs as follows:

Career and Technical Education Scholarship	Academic Scholarship
Complete four units of English language arts	Complete four units of English language arts
Complete three units of mathematics, including one unit of algebra II and two units of other mathematics	Complete one unit of algebra II and one unit of mathematics for which algebra II is a prerequisite
Complete three units of science	Complete three units of science
Complete three units of social studies	Complete three units of social studies
Complete one unit of physical education or one half unit of physical education and one half unit of health	Complete one unit of physical education or one half unit of physical education and one half unit of health
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, Native American language, or sign language
Complete one unit selected from foreign language, Native American language, American sign language, fine arts, or career and technical education	Complete one unit selected from foreign language, Native American language, American sign language, fine arts, or career and technical education
Complete five additional units, two of which must be in the area of career and technical education	Complete any five additional units, one of which must be in the area of fine arts or career and technical education
Obtain a cumulative grade point average of at least 3.0 on a 4.0 grading scale for all courses taken or only for courses taken that are required for the scholarship	Obtain a cumulative grade point average at of least 3.0 on a 4.0 grading scale for all courses taken or only for courses taken that are required for the scholarship
Obtain a grade of at least "C" in each unit or one half unit required for the scholarship	Obtain a grade of at least "C" in each unit or one half unit required for the scholarship
Receive a composite score of at least 24 on the 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
	Fulfill one unit required for the scholarship through an advanced placement course or fulfilled one half unit required for the scholarship through a dual-credit course

Any student that meets the requirements for a career and technical education scholarship or an academic scholarship is eligible to receive a scholarship of $750 per semester, or $500 per quarter, for each period the student is enrolled full time at a North Dakota higher education institution and maintains eligibility up to a maximum amount of $6,000. Scholarships may be provided to students for up to six years following the student's graduation from high school and may not be used for graduate programs.

The following schedule details appropriations made by the Legislative Assembly for the programs during the 2009-11 and 2011-13 bienniums:

Biennium	General Fund Appropriation
2009-11	$3 million
2011-13	$10 million

Due to the number of recipients being less than anticipated, the University System estimates only $7.4 million of scholarships will be awarded during the 2011-13 biennium.

Report

Representatives of the University System provided reports to the committee regarding the academic and career and technical education scholarship programs. The committee reviewed the following schedule detailing the number of high school graduates that were eligible to receive the scholarship for the past three years:

	2010	2011	2012	Total
Number of high school graduates	7,677	8,674	7,994	24,345
Number of high school graduates eligible to receive a scholarship	1,589	1,201	1,347	4,137
Percentage of high school graduates eligible to receive a scholarship	20.7%	13.8%	16.9%	17.0%

The committee learned that of the 4,137 students that were originally eligible to receive a scholarship, 2,759 students received a scholarship during the fall 2012 semester while 681 students deferred the scholarship, 489 students did not meet grade point average requirements to continue receiving the scholarship, and 208 students were not enrolled full time at a higher education institution. The following schedule

details the institutions attended by students that received a scholarship during the fall 2012 semester:

Institutions Attended By Students Receiving an Academic or Career and Technical Education Scholarship Fall 2012					
	Two-Year Public or Tribal College	Four-Year Public Institution	Public Research Institution	Private Institution	Total
Academic scholarship recipients	119	232	1,318	240	1,909
Career and technical education scholarship recipients	218	152	388	92	850
Total	337	384	1,706	332	2,759

The committee received information regarding the estimated cost to continue the career and technical education and academic scholarship program annual award amounts of $1,500, the estimated cost to increase the scholarship award amounts to $3,000 annually, and the estimated cost to pay for total tuition costs for eligible scholarship recipients. The table below summarizes the estimated biennial costs of the scholarship programs based on current and increased annual award amounts.

Biennium	Continue $1,500 Award Amount	Increase Award Amount to $3,000[1]	Increase Award Amount to Cost of Tuition[1,2]
2013-15	$13,361,944	$18,992,944	$28,135,457
2015-17	$17,033,866	$30,232,419	$53,945,057
2017-19	$19,485,145	$38,599,976	$77,247,036
2019-21	$21,233,583	$42,467,165	$90,555,824

[1]Estimates are based on increasing scholarship award amounts to new recipients only.

[2]Based on average undergraduate tuition charges at each institution type, students are enrolled in 15 credit-hours per semester, tuition will increase at a rate of 3 percent annually after the 2013-15 biennium, and enrollment percentages at each institution type will remain the same. Anticipates that scholarships for students enrolled at private institutions are limited to an amount equal to the highest tuition rate charged by a University System institution.

GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES

Chapter 15-70 creates an assistance program for tribally controlled community colleges located in the state. Funding is to be distributed to the tribally controlled community colleges to defray the costs of education associated with the enrollment of nonbeneficiary students.

In order to qualify for a grant, a qualified institution must 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 an annual payment to the institution for each nonbeneficiary student enrolled at the institution. The amount of payment is to be equal to the per student payment provided to institutions under the federal Tribally Controlled Colleges and Universities Assistance Act of 1978 or a prorated amount if funding is limited.

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 documentation of 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.

The table below details legislative appropriations for grants to tribally controlled community colleges.

	General Fund	Permanent Oil Tax Trust Fund
2007-09 biennium		$700,000
2009-11 biennium		$700,000
2011-13 biennium	$1,000,000	

Report

Representatives of the University System provided reports to the committee regarding the allocation of tribal college assistance grants. The committee learned $500,000 was allocated to five tribal colleges during the 2011-12 academic year. Grant funding of $3,977.46 was awarded for each FTE nonbeneficiary student enrolled during the academic year. The following schedule details the allocation of grant funding during the 2011-12 academic year:

Tribal College Assistance Grants 2011-12 Academic Year			
Institution	Headcount of Nonbeneficiary Students	FTE Enrollment of Nonbeneficiary Students	Grant Funds Provided
Cankdeska Cikana Community College	16	11.75	$46,735
Fort Berthold Community College	19	8.83	35,134
Sitting Bull College	5	5.92	23,534
Turtle Mountain Community College	38	26.75	106,397
United Tribes Technical College	91	72.46	288,200
Total	169	125.71	$500,000

The University System expects to distribute the remaining $500,000 of 2011-13 biennium grant funding during the 2012-13 academic year.

INTERNATIONAL TRANSFER AGREEMENTS AT DICKINSON STATE UNIVERSITY

The Legislative Management Chairman directed the committee to receive information from the University System office and Dickinson State University regarding the University System's internal review report of international transfer agreements at Dickinson State University. The committee learned the review was conducted to determine if Dickinson State University was in compliance with State Board of Higher Education policy

and international agreements. The following special international student programs were reviewed:

- Dual-degree joint (DDJ) program - Allows Chinese students to obtain a bachelor's degree from both Dickinson State University and the student's home institution upon completion of the program.
- Top-up program - Chinese students who complete two to three years of study at their home institution may receive a college diploma from their home school and a bachelor's degree from Dickinson State University upon completion of the program.
- Disney program - A two-semester program in partnership with Chinese institutions that requires a student to take 16 credit-hours in Human Resources on the Dickinson State University campus the first semester and complete certain academic requirements while in residence at Walt Disney World during the second semester.

The committee received the following summary of the internal review objectives and results:

Review Objective	Review Results
1. Verify accuracy of student's course of study and credit-hours earned compared to catalog requirements	DDJ, top-up, and Disney program students were admitted as freshman students instead of transfer students. Some students did not meet minimum requirements for admission to Dickinson State University. Official student documents, including transcripts, were not received from Chinese institutions. Dickinson State University officials accepted nonstandard English proficiency test results for Chinese DDJ program students. Transfer credits were not entered into the ConnectND system, and officials cannot verify the students completed the required general education courses. Chinese DDJ and top-up program students did not complete enough credits to earn a degree at Dickinson State University.
2. Verify compliance with international dual-degree agreements	Dickinson State University has not forwarded all agreements to the University System Office of Articulation and Transfer. Dickinson State University's articulation agreements do not follow the institution's catalog for required degree programs. A majority of Dickinson State University's international agreements are incomplete, inaccurate, or expired. Students in the top-up program may not have attended an accredited university in China. Student recruiting agents in China are not performing according to the contracts between the agents and Dickinson State University.

The committee learned representatives of Dickinson State University began to investigate international agreements after a meeting with the Higher Learning Commission in December 2011. Officials at Dickinson State University began reviewing the agreements, and assistance was requested from the University System office after irregularities were found.

The committee learned Dickinson State University is addressing the issues documented in the internal review report. The university is working with students enrolled in the special international student programs to obtain official transcripts from the students' home institutions. The transcripts will be reviewed to determine if the transcripts are legitimate and then reviewed when each course is completed by a student at the student's home institution.

The committee also received the performance audit report conducted by the State Auditor's office of Dickinson State University. The objective of the performance audit was to determine if the university has established an adequate system for monitoring operations. The following is a summary of the 33 audit recommendations by major area:

Review Area	State Auditor's Office Results and Findings
Tuition and fees	The university needs to ensure tuition rates are consistently charged and accurately reflect what will be collected. Due in part to the access fee fund having a cash balance in excess of $2 million, the university should make changes to ensure the fee amount charged is appropriate and the fee money is used for expenses associated with distance education. Improvements are needed to ensure fees are charged to the students who are expected to utilize the services supported with the fees. Improvements are also needed with the use of application fees as well as with how university fees are allocated.
Scholarships and waivers	The university should comply with established criteria in awarding Roughrider scholarships. Improvements are needed with the monitoring of Roughrider scholarship recipients as well as recipients of global and cultural tuition waivers. The university needs to ensure a single department is responsible for the Roughrider scholarship award program. In addition, a single department should be responsible for the global and cultural tuition waiver programs.
Fiscal-related areas	The university needs to make improvements to be good stewards of public funds. The university should ensure adequate funds exist prior to incurring expenditures. Improvements are needed with international recruiting agent agreements to ensure requirements are adequately monitored. Improvements are also needed with procurement processes and written agreements for services entered by the university.
Additional areas requiring improvement	The university needs to make improvements to foster open communication and coordinate efforts of departments/offices. Enrollment of individuals as students should only occur when required documentation is completed and submitted to the university. Improvements are needed to ensure the university is in compliance with academic standards and to validate the academic integrity of the university. Changes are needed with the admissions process for international students as well as with the actions taken by the university when visa requirements are not being met. The State Auditor's office identified improvements are needed with certain human resource areas, including complying with requirements related to merit salary increases, performance reviews, and investigations of alleged violations of policies.

The committee learned Dickinson State University is working to improve communication between the administration, faculty, staff, students, and others at the campus. Previously there was a sense of intimidation on campus which discouraged employees from reporting suspected improper activities. Employees of the university may now contact the University System internal auditor directly with any concerns. In addition, the committee learned several personnel changes have occurred in areas identified in the internal review report.

HUMAN SERVICES COMMITTEE

The Human Services Committee was assigned the following responsibilities:

1. Section 2 of 2011 Senate Bill No. 2268 directed a study of the current system for the diagnosis, early treatment, care, and education of individuals with autism spectrum disorder, including a review of a sliding fee scale for payment of services and the value of services provided; consideration of the recommendations of the Autism Spectrum Disorder Task Force; and input from stakeholders in private and public sectors, including families affected by autism spectrum disorder, insurers, educators, treatment providers, early childhood services providers, caretakers, and nonprofit intermediate care facilities for individuals with intellectual disabilities.
2. Section 1 of 2011 House Bill No. 1199 directed the Legislative Management to contract with a consultant to study guardianship services for vulnerable adults in the state. The study must include an analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs with providing guardianship services; the entities responsible for guardianship costs; and the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services. The Legislative Management amended the directive to include a study of the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services. The consultant was to provide periodic reports and provide the final report and recommendations regarding the study before June 1, 2012.
3. Senate Concurrent Resolution No. 4020 (2011) directed a study of the causes of the increases in Department of Human Services' caseloads and program utilization and the impact of federal health care reform.
4. Section 9 of 2011 Senate Bill No. 2012 directed a study and evaluation of the state's qualified service provider system.
5. The Legislative Management assigned the committee responsibility to receive the following reports:
   a. An annual report on the autism spectrum disorder plan from the Autism Spectrum Disorder Task Force pursuant to North Dakota Century Code Section 50-06-32.
   b. An annual report from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan pursuant to Section 50-29-02.
   c. A report from the Health Information Technology Advisory Committee by June 30, 2012, regarding the outline on how best to standardize drug prior authorization request transactions between providers and the payers, insurance companies, and pharmacy benefit managers pursuant to Section 2 of 2011 House Bill No. 1422.
   d. Periodic reports from the Department of Human Services regarding the status of the dementia care services program pursuant to Section 5 of 2011 Senate Bill No. 2012.
   e. Reports from the Department of Human Services and its steering committee beginning in June 2012 regarding the development of a new developmental disabilities reimbursement system pursuant to Section 1 of 2011 Senate Bill No. 2043.
   f. A report from the Department of Human Services before September 30, 2012, regarding the department's preliminary findings and recommendations concerning its regional autism spectrum disorder centers of early intervention and achievement pilot program and receive a written report from the department before December 31, 2012, summarizing the status of the pilot program and any findings and recommendations pursuant to Section 1 of 2011 Senate Bill No. 2268.
   g. A report from the Department of Human Services before September 30, 2012, of preliminary findings and recommendations regarding the department's comprehensive review of the substance abuse services pilot voucher payment program pursuant to Section 2 of 2011 Senate Bill No. 2326.

Committee members were Representatives Alon Wieland (Chairman), Dick Anderson, Roger Brabandt, Donald L. Clark, Tom Conklin, Curt Hofstad, Kathy Hogan, Richard Holman, Robert Kilichowski, Vonnie Pietsch, Chet Pollert, and Jim Schmidt and Senators Dick Dever, Robert Erbele, Tim Mathern, Joe Miller, and Gerald Uglem.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

STUDY OF THE AUTISM SPECTRUM DISORDER

The Human Services Committee was assigned the following responsibilities relating to the autism spectrum disorder:

- A study of the current system for the diagnosis, early treatment, care, and education of individuals with autism spectrum disorder, including a review of a sliding fee scale for payment of services and

the value of services provided; consideration of the recommendations of the Autism Spectrum Disorder Task Force; and input from stakeholders in private and public sectors, including families affected by autism spectrum disorder, insurers, educators, treatment providers, early childhood services providers, caretakers, and nonprofit intermediate care facilities for individuals with intellectual disabilities pursuant to Section 2 of 2011 Senate Bill No. 2268.
- Receive an annual report on the autism spectrum disorder plan from the Autism Spectrum Disorder Task Force pursuant to Section 50-06-32.
- Receive a report from the Department of Human Services before September 30, 2012, regarding the department's preliminary findings and recommendations concerning its regional autism spectrum disorder centers of early intervention and achievement pilot program and receive a written report from the department before December 31, 2012, summarizing the status of the pilot program and any findings and recommendations pursuant to Section 1 of 2011 Senate Bill No. 2268.

Background Information

An autism spectrum disorder is a developmental disorder that causes significant impairments in the areas of socialization, learning, communication, behavior, and play skills. The deficiencies can lead to serious behaviors and can interfere with daily living. Characteristics do not usually manifest until between one and three years of age. The spectrum includes autism, Asperger's syndrome, pervasive development disorder - not otherwise specified, Rett's syndrome, and childhood disintegrative disorder. Symptoms and levels of impairments vary widely.

Autism Spectrum Disorder Task Force

Section 50-06-32 establishes an Autism Spectrum Disorder Task Force consisting of the State Health Officer, the Executive Director of the Department of Human Services, the Director of special education, the Executive Director of the Protection and Advocacy Project, and the following members appointed by the Governor:

- A pediatrician with expertise in the area of autism spectrum disorder;
- A psychologist with expertise in the area of autism spectrum disorder;
- A college of education faculty member with expertise in the area of autism spectrum disorder;
- A licensed teacher with expertise in the area of autism spectrum disorder;
- An occupational therapist;
- A representative of a health insurance company doing business in the state;
- A representative of a licensed residential care facility for individuals with autism spectrum disorder;
- A parent of a child with autism spectrum disorder;
- A family member of an adult with autism spectrum disorder; and
- A member of the Legislative Assembly.

The task force is to examine early intervention services, family support services that would enable an individual with autism spectrum disorder to remain in the least restrictive home-based or community setting, programs transitioning an individual with autism spectrum disorder from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder.

The task force met several times; reviewed legislation, other states' autism spectrum disorder information, plans, and funding mechanisms; developed, disseminated, and summarized a statewide autism spectrum disorder needs assessment survey; established an initial state plan; and provided prioritized recommendations regarding autism spectrum disorder services to the Human Services Committee.

Department of Human Services Autism Spectrum Disorder Medicaid Waiver

The committee received testimony from the Department of Human Services regarding the department's autism spectrum disorder Medicaid waiver and learned the waiver was approved by the Centers for Medicare and Medicaid Services in November 2010 for a period of three years (November 1, 2010, through October 31, 2013). The waiver has the capacity to annually serve 30 children ages birth through four years who have a confirmed autism spectrum disorder diagnosis. Services available through the waiver include intervention coordination, in-home supports, equipment and supplies, and environmental modifications. As of October 2012, 19 children are receiving services through the wavier. Children may receive multiple services based upon their needs. The department's budget for the children's autism spectrum disorder wavier for the 2011-13 biennium is $1,860,324, of which $822,144 is from the general fund. Actual total fund expenditures were $165,613 through August 2012. Utilization of the waiver is less than budgeted due in part to the age restrictions (individuals birth through age four) and service limitations. The department is gathering stakeholder input regarding suggested changes to the waiver, including changes to the eligible age group and changes to covered services. The department will consider the suggested changes in its application for renewal of the waiver.

Department of Human Services Regional Autism Spectrum Disorder Centers of Early Intervention and Achievement

Senate Bill No. 2268 (2011) provides that the Department of Human Services may use up to $200,000 of its legislative appropriation for the 2011-13 biennium to establish and operate a regional autism spectrum disorder center of early intervention and achievement pilot program. The pilot program must provide a

matching grant to a qualified applicant that is a nonprofit intermediate care facility for individuals with intellectual disabilities which is licensed by the department. A qualified applicant is to establish the availability of $1 of nonstate, cash matching funds for each grant dollar awarded. The source of matching funds must be funds of the applicant. A qualified applicant is to submit a plan for the delivery and funding of skilled services to individuals with autism spectrum disorder who reside within the applicant's service region. The plan must provide for the establishment of a regional autism spectrum disorder center of early intervention and achievement in a city with a population of more than 10,000. As a condition of a grant award under this program, a qualified applicant is to agree to collaborate with the department in developing and implementing the plan as well as postaward monitoring by the department.

As of October 2012, the Department of Human Services does not anticipate having the funding available for this purpose.

Testimony and Recommendations

Department of Human Services

The committee received testimony from the Department of Human Services regarding autism spectrum disorder services. The committee learned services for individuals with autism spectrum disorder are provided by several entities, including education, mental health, primary health care, developmental disabilities, advocacy organizations, and vocational rehabilitation. The Department of Human Services provides services to individuals with autism spectrum disorder through the infant development program, the Developmental Disabilities Division, Vocational Rehabilitation Division, and Mental Health and Substance Abuse Division. In the Developmental Disabilities Division, individuals need to have a developmental or intellectual disability, must be in need of institutional level of care, and be diagnosed with mental retardation.

The Department of Human Services does not consider autism spectrum disorder services as a core service of the department. The department is unable to provide a cost estimate for providing autism spectrum disorder services as a core service of the department until decisions are made and direction is provided as to the scope, intensity, and focus of the services. A sliding fee scale is used at the department's regional human service centers and could serve as an approach to apply to autism spectrum disorder services.

Department of Public Instruction

The committee received testimony from the Department of Public Instruction regarding autism spectrum disorder services. The committee learned the Department of Public Instruction is responsible for the general supervision of the Individuals with Disabilities Education Act (IDEA), which is the federal law for special education. The Department of Human Services is responsible for the IDEA services for infants and toddlers and their families, and the Department of Public Instruction is responsible for the IDEA special education services for children and youth with disabilities ages 3 through 21.

The committee learned each year the Department of Public Instruction identifies the number of eligible students with disabilities ages 3 through 21 who are receiving special education and related services in North Dakota public schools. The most recent statewide count was completed on December 1, 2011, and at that time, there were 13,123 such students. Of the 13,123 students, 718 students were reported as having a primary disability of autism.

The committee learned the federal Office of Special Education Programs provides IDEA Part B formula grants to states to assist them to provide a free appropriate public education in the least restrictive environment for children with disabilities ages 3 through 21. Annually the Department of Public Instruction distributes the IDEA Part B funds to local special education units. These funds may be used for locally identified special education services and activities. Special education units may also apply for discretionary grants from the department to support locally identified initiatives which may include training needs.

Other Interested Persons

The committee received the following key comments from families affected by autism spectrum disorder, insurers, educators, treatment providers, early childhood services providers, caretakers, and nonprofit intermediate care facilities for individuals with intellectual disabilities:

- Individuals with autism spectrum disorder are unique and require individualized treatment approaches and plans. Adequate care requires an individualized, systems approach that includes the individual, their family and caregivers, the educational and legal systems, medical providers, occupational and speech therapists, and vocational and community supports.
- A sufficient amount of evidence-based research has not yet been completed regarding the diagnosis and treatment of the autism spectrum disorder.
- Many schools in the state are not prepared to serve students with autism spectrum disorders.
- There is a need for coordination of services among families, communities, and schools.
- Treatment options for individuals with autism spectrum disorders in rural areas are almost nonexistent.
- Families are experiencing challenges with the Department of Human Services' autism spectrum disorder Medicaid waiver, including the length of time to be approved for the waiver and lack of quality services provided under the waiver.
- The Anne Carlsen Center has begun offering autism spectrum disorder services in the major communities throughout the state. The services include diagnostics, comprehensive evaluations, program planning and development, intervention services, referral and family support services, and education and training.

- The committee should consider encouraging the medical community and families to be educated about the autism spectrum disorder and the importance of developmental screenings for young children.
- The committee should consider education, job coaching, and independency for the growing population of adults with autism spectrum disorders.

The following is a summary of the suggestions submitted to the committee for its consideration:

Rank	Autism Spectrum Disorder Task Force	Autism Society of North Dakota	Ms. Vicki Peterson
1	**State autism coordinator and assistant** - Add two new full-time equivalent (FTE) positions responsible for implementing a "one-stop shop" for information and services for individuals with an autism spectrum disorder, developing a state outreach plan, holding regional meetings, holding an annual conference, and developing a protocol for use after screening. The estimated biennial cost is $494,135, consisting of $242,122 for the coordinator's salary, benefits, and other office costs such as information technology fees; $132,769 for the assistant's salary, benefits, and other office costs; and $119,244 for operating expenses for travel and annual conference expenses.	**Autism spectrum disorder registry** - Develop and maintain an autism spectrum disorder registry within the State Department of Health. The estimated biennial cost is $148,132, including one FTE position, for a simple registry and $605,298, including three FTE positions, for a more comprehensive registry.	**Access and awareness** - Access to services for children, youth, and adults who have an autism spectrum disorder is limited in North Dakota compared to many other states. The state's Medicaid program and private insurance carriers need to support families in accessing services, including diagnosis, therapies, respite, and general health care.
2	**Comprehensive training funds** - Implement a statewide training effort, including physician training, regional training, and parent training, led by the state autism coordinator in coordination with key agencies. The estimated biennial cost is $158,032, consisting of $4,800 for physician training, $98,832 for regional training, $6,400 for parent training, and $48,000 for a statewide training fund.	**Voucher system for services and support** - Establish a voucher system to be used for autism spectrum disorder programs and services. The estimated biennial cost for 150 individuals is $4.5 million.	**Delivery methods of therapies and services** - Examine different ways to deliver therapies and services, including emphasis on medical homes and telehealth practices.
3	**Autism spectrum disorder Medicaid waiver** - Expand the Department of Human Services' autism spectrum disorder Medicaid waiver to cover individuals from age 3 through end of life and to provide services, such as evidence-based practices, intervention coordination, in-home support, equipment and supplies, home monitoring, residential supports and services, extended vocational supports, and behavioral consultation. The estimated biennial cost would be dependent upon the number of individuals served. The department's current developmental disabilities traditional waiver is budgeted on each person's services and support, costing an average of $27,239 per year for waiver services.	**Educational training and support** - Provide training and support to classroom teachers and other staff to implement best practices for educating and providing services to students with an autism spectrum disorder. The estimated biennial cost is $198,000.	**Training and cross-training** - Develop a more standard definition of a diagnosis of autism, establish a more central location for resources in the state, and provide more training and cross-training in the educational system.
4	**Behavioral analysts** - Increase the number of professionals delivering behavioral analyst services by providing funding support for 16 individuals (two in each region) to complete the St. Paul online board-certified behavioral analyst program to include the required supervision up to the point of taking the certification. The estimated biennial cost is $198,864, consisting of $12,429 for coursework, internship, textbooks, examination, and license costs for 16 individuals.		**Looking ahead** - Develop programs, including assistance for children transitioning into adulthood.
5	**Dedicated diagnostic, evaluation, and service planning teams** - Provide funding for evaluation, diagnostic, and service planning teams comprised of a physician, occupational therapist, physical therapist, certified behavioral analyst, and family support member. The teams must interact with regional coalitions, state agencies, and the Autism Spectrum Disorder Task Force and provide timely referral and outcome reports. Evaluations and screenings currently range from $1,725 to $5,045 per child. The estimated cost of screening eight children in each of the eight regions would range from		

Rank	Autism Spectrum Disorder Task Force	Autism Society of North Dakota	Ms. Vicki Peterson
6	$110,400 to $322,880. The estimated cost of screening 16 children in each of the eight regions would range from $220,800 to $645,760. **Health insurance mandate** - Eliminate the exclusions for autism care and treatment in health insurance policies. Senate Bill No. 2268 (2011) as introduced, but not approved, provided for this recommendation. The fiscal note submitted for this version of the bill estimated a cost of approximately $5.8 million for state government for the 2011-13 biennium.		
7	**Autism spectrum disorder registry** - Develop and implement an autism spectrum disorder registry. The estimated biennial cost is $200,648, consisting of $164,247 for personnel costs, $20,057 for operating expenses such as travel and supplies, and $16,344 for indirect costs.		

Committee Recommendations

The committee recommends House Bill No. 1037 to provide for a Legislative Management study of the autism spectrum disorder. The bill provides that during the 2013-14 interim, the Legislative Management consider studying the current system for the diagnosis, early treatment, care, and education of individuals with autism spectrum disorder. The study must continue the work of the Legislative Management during the 2011-12 interim on the study of the autism spectrum disorder, consider the recommendations of the Autism Spectrum Disorder Task Force, and seek input from stakeholders in the private and public sectors.

The committee recommends House Bill No. 1038 relating to an autism spectrum disorder registry and educational training and support for teachers and other staff. The bill provides:

- The State Department of Health is to establish and administer an autism spectrum disorder registry. The registry must include a record of all reported cases of autism spectrum disorder in the state and any other information deemed relevant and appropriate by the department in order to complete epidemiologic surveys of the autism spectrum disorder, enable analysis of the autism spectrum disorder, and provide services to individuals with an autism spectrum disorder.
- A $148,132 general fund appropriation to the State Department of Health for establishing and administering an autism spectrum disorder registry for the 2013-15 biennium. The department is authorized one FTE position for the initiative.
- A $198,000 general fund appropriation to the Department of Public Instruction for providing training and support to general education classroom teachers and other school staff regarding the most effective methods of educating and providing services and support to individuals with autism spectrum disorder for the 2013-15 biennium.

The committee recommends House Bill No. 1039 relating to a voucher system for autism spectrum disorder services and support. The bill provides:

- The Department of Human Services develop a voucher system for autism spectrum disorder services and support. The program is to consist of up to 100 individuals up to age 26 and up to 50 individuals aged 26 and older. To be eligible for the program, individuals must have been a resident of the state for a minimum of six months, have income levels that do not exceed 300 percent of the federal poverty level, and have a clinician's diagnosis of autism, Asperger's syndrome, or pervasive developmental disorder not otherwise specified. Eligible services for individuals up to age 26 include assessments, medical care, mental health services, occupational therapy and equipment, speech and language services, assistive technology, case management, transportation, educational supports, respite care, executive and social skills training programs, and development and implementation of behavioral intervention plans. Eligible services for individuals aged 26 and older include assessments, medical care, mental health services, occupational therapy and equipment, educational and employment services, housing, transportation, medical care, and independent living services.
- A $4.5 million general fund appropriation to the Department of Human Services for administering a voucher system for autism spectrum disorder services and support. The department is to allocate up to $30,000 per year to each individual enrolled in the voucher program for paying costs of eligible services.

STUDY OF GUARDIANSHIP SERVICES

Section 1 of 2011 House Bill No. 1199 provided the Legislative Management is to contract with a consultant to study guardianship services for vulnerable adults in the state. The study must include analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs associated with providing guardianship services; the entities responsible for guardianship costs; and the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship

services. The Human Services Committee was assigned this responsibility.

The Legislative Assembly also provided the Human Services Committee study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services.

Background Information

When a court determines an individual lacks the capacity to make or communicate the decisions necessary to manage his or her own personal affairs, a guardian may be appointed. Guardianship is the process by which a court, after determining that an individual is incompetent to make specific decisions, delegates the right to make those decisions to a guardian. Depending on the state statutes, a guardian may also be referred to as a conservator or curator. The process to initiate a guardianship and the practices following the appointment of a guardian differ from state to state. While all states require some sort of petition, notice, and judicial consideration before appointing a guardian, the extent of due process rights afforded the alleged incapacitated person varies.

Types of guardianships include:

- General guardian - Responsible for decisions in all aspects of the ward's (incompetent individual's) life.
- Limited guardian - Has authority to make decisions only in specific areas of the ward's life, such as financial or residential.
- Emergency or temporary guardian - Appointed in situations where immediate action is required to prevent harm to the ward. An emergency guardianship may not be in effect for more than 90 days and has only the authority identified by the court at the time of the appointment. The court may grant an extension beyond the 90-day limit if necessary.
- Testamentary guardian - Established when a guardian spouse or guardian parent of a person determined to be incapacitated appoints, by will, a successor guardian for that person.
- Conservator - Manages the estate and finances of a ward.

Consultant Services and Methodology

The Legislative Council issued a request for proposal for consultant services for assistance in a study of guardianship services for vulnerable adults in North Dakota. The specific areas to be addressed included:

1. The need for guardianship services in the state - Review the number of guardians appointed by the courts and identify the unmet need for guardianship services in the state.
2. The establishment of guardianships - Review the services available for assistance with the establishment of guardianships and the process for the establishment of guardianships and recommend proposed changes.
3. Petitioning and other costs - Identify petitioning and other costs associated with providing guardianship and public administrator services and financial assistance available.
4. Entities responsible for guardianship and public administrator costs - Identify the entities currently responsible for guardianship and public administrator costs.
5. Interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services - Review the duties and responsibilities of these entities and the cooperation/collaboration and interaction between and among the entities associated with guardianship and public administrator services and recommend proposed changes.
6. The efficacy of statutes governing guardianship and public administrator services - Review the statues governing guardianship and public administrator services, evaluate the effectiveness of the statues, and recommend proposed changes.
7. Methods for the timely and effective delivery of guardianship and public administrator responsibilities and services - Determine the appropriate duties and responsibilities for entities involved in guardianship services, financial responsibilities, and the appropriate role for public administrators in providing guardianship services. Provide estimated costs for guardianship services for the 2013-15 biennium, identified by recommended entity responsible for these costs.

The committee received proposals from two entities interested in providing consultant services--Mr. Winsor C. Schmidt, J.D., LL.M., University of the Louisville School of Medicine, Louisville, Kentucky, and North Dakota Center for Persons with Disabilities, Minot. The committee selected and contracted with Mr. Schmidt to conduct the study.

Findings and Recommendations

The committee learned Chapters 30.1-26 and 30.1-28 govern guardianship services, and Chapter 11-21 governs public administrator services. Section 30.1-28-11(1) provides that a guardian may be any competent person or a designated person from a suitable institution, agency, or nonprofit group home. A guardian is court-appointed after a hearing for an incapacitated person. An incapacitated person is defined as any adult person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, or chemical dependency to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or if the incapacity endangers the person's health or safety. A public administrator is an individual, corporation, or limited liability company appointed by the presiding judge as ex officio guardian and conservator of the incapacitated person for the county.

Mr. Schmidt presented the following findings and recommendations by major study area:

I. The need for guardianship services in the state - Review the number of guardians appointed by the courts and identify the unmet need for guardianship services in the state.

Observations and Findings

- There were 2,038 guardianship and conservatorship cases in North Dakota in 2010. There were 323 new filings in 2010 and an average of 311 new appointments per year from 2008 through 2010.
- Based on published national research on the extent of need for guardianship services, North Dakota's projected total population-based need for guardianship services is 751 individuals. The Department of Human Services has entered a contract with Catholic Charities North Dakota to serve 414 individuals in the 2011-13 biennium, and the department's Aging Services Division also has been provided funding to assist with the establishment of 32 guardianships for the 2011-13 biennium. Considering this, the total population-based unmet need for guardianship services in North Dakota is 305 individuals.
- The Council on Accreditation has developed adult guardianship accreditation standards. One of the standards provides that guardianship caseload sizes should support regular contact with individuals and the achievement of desired outcomes. Studies of guardianship programs recommend a 1-to-20 staff to client.
- One of North Dakota's principal corporate guardianship programs reports a guardianship staff-to-client ratio of 1-to-36-39.
- One of the several public administrators serving as guardian reports a part-time guardian caseload ranging from 22 to 29 with wards housed 210 miles apart.
- The *North Dakota Guardianship: Standards of Practice for Adults* publication provides that a guardian is to limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers.
- The National Academy of Elder Law Attorneys, the National Guardianship Association, and the National College of Probate Judges convened a Wingspan Implementation Session in 2004 to identify implementation steps relating to guardian certification. Steps include enacting a statutory framework to require education and certification of guardians and establishing a statewide registration of guardians.
- Some of the North Dakota guardianship stakeholders expressed concerns relating to oversight and monitoring of guardians and guardian annual reports and lack of requirements, such as criminal background and credit checks.

Recommendations

- Enact a statutory framework to require education and certification of guardians as well as continuing education with the appointment process to ensure that all guardians meet core competencies.
- Adopt minimum standards of practice for guardians using the *National Guardianship Association Standards of Practice* as a model.

II. The establishment of guardianships - Review the services available for assistance with the establishment of guardianships and the process for the establishment of guardianships and recommend proposed changes.

Observations and Findings

- Chapter 30.1-28 provides the judicial process for the establishment of guardianships. Any interested person may petition for the appointment of a guardian for an allegedly incapacitated person. No filing fee may be required for a petition by a member of the individual treatment plan team or by any state employee. The court is to set a hearing date, appoint an attorney to act as guardian ad litem, appoint a physician or clinical psychologist to examine the proposed ward, and appoint a visitor to interview the proposed guardian and proposed ward. If the attorney appointed as guardian ad litem or other attorney is retained by the proposed ward to act as an advocate, the court may determine whether the guardian ad litem should be discharged. The proposed ward must be present at the hearing in person unless good cause is shown for the absence. If the court approves a visitor, lawyer, physician, guardian, or temporary guardian, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being. The court may appoint a guardian only after finding in the hearing record based on clear and convincing evidence that:

  The proposed ward is an incapacitated person.

  There is no available alternate resource plan which could be used instead of guardianship.

  The guardianship is the best means of providing care, supervision, or habilitation.

  The powers and duties given the guardian are the least restrictive form of intervention consistent with the ability of the ward for self-care.
- Section 30.1-28-10 authorizes the court to exercise the power of a guardian pending notice and hearing or, with or without notice, appoint a temporary guardian for a specified period of time, not to exceed 90 days, if:

  An alleged incapacitated person has no guardian and an emergency exists; or

  An appointed guardian is not effectively performing the guardian's duties, and the court finds that the welfare of the ward requires immediate action.
- Some North Dakota guardianship stakeholders expressed concerns with the judicial process for the establishment of guardianships, including the

lack of mandatory reporting of vulnerable adult abuse and neglect, filing fees not waivable for indigents, limited legal assistance from state's attorneys or assistant attorneys general for petitioners in indigent cases, the lack of right to counsel or public defender for the proposed ward if the proposed ward cannot afford counsel, some proposed wards reportedly not present at hearings, and appointment of emergency guardians for up to 90 days without notice and a hearing.

Recommendations

- Change from voluntary reporting of vulnerable adult abuse or neglect to mandatory reporting of vulnerable adult abuse or neglect.
- Adopt model recommendations regarding the right to counsel and the duties of counsel representing the proposed ward at the hearing.
- Adopt Section 311 of the Uniform Guardianship and Protective Proceedings Act related to emergency guardians regarding required petition details, notice, the right to a hearing, the right to counsel, presence of the proposed ward at the hearing, limited duration, and the standard of proof.

III. Petitioning and other costs - Identify petitioning and other costs associated with providing guardianship and public administrator services and financial assistance available.

Observations and Findings

	Petitioning and Other Costs Associated With Guardianship Services
North Dakota - Department of Human Services Aging Services Division	Average petitioning cost was $1,474 for the 2009-11 biennium. Funds available to provide a $500 annual payment to 16 guardians in the first year of the 2011-13 biennium and 32 guardians in the second year of the biennium.
North Dakota - Department of Human Services Developmental Disabilities Division	Funding of $2,052,415 available for 414 wards during the 2011-13 biennium, including $51,720 for petitioning costs. The daily rate for corporate guardian services is $6.52 per ward in the first year of the 2011-13 biennium ($2,380 per client annually) and $6.71 per ward in the second year of the biennium ($2,449 per client annually).
Washington	Average annual cost per public guardian for the period 2008-11 was $3,163.

Recommendations

None

IV. The entities responsible for guardianship and public administrator costs - Identify the entities currently responsible for guardianship and public administrator costs.

Observations and Findings

- The North Dakota Legislative Assembly has provided appropriations to the Department of Human Services for providing corporate guardianship services in the Developmental Disabilities Division and for petitioning costs and guardianship fee for individuals who have been diagnosed with a mental illness or traumatic brain injury or elderly individuals aged 60 and over.
- Some counties in North Dakota have provided funding for several public administrators in the state.

Recommendations

None

V. The interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services - Review the duties and responsibilities of these entities and the cooperation/collaboration and interaction between and among the entities associated with guardianship and public administrator services and recommend proposed changes.

Observations and Findings

- Based on interviews with North Dakota guardianship stakeholders, the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship and public administrator services seems generally good. There is some tension with the counties regarding funding of public administrators appointed by presiding district judges.
- The following are alternative structures for state public guardianship programs:

  Court model - This model establishes the public guardianship office as part of the court that has jurisdiction over guardianship and conservatorship.

  Independent state agency model - This model establishes a public guardianship office in an executive branch agency that does not provide direct services for a ward or potential wards.

  Social service agency model - This model provides for placement of the public guardianship function in an agency providing direct services to wards. Several studies conclude this model is a clear conflict of interest.

  County agency model - This model provides for the public guardianship function at the county level.
- North Dakota is currently a hybrid of the social service agency model and the county model.
- Guardianship stakeholders expressed concerns about lack of uniformity and statewide coverage of guardianship services.

Recommendations

- Change from the hybrid of the social service agency model and the county model. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.

VI. The efficacy of statutes governing guardianship and public administrator services - Review the statutes governing guardianship and public administrator services, evaluate the effectiveness of the statutes, and recommend proposed changes.

Observations and Findings

- North Dakota has an "implicit" statutory scheme for public guardianship. Implicit schemes often name a state agency or employee as guardian of last resort when there are no willing and responsible family members or friends to serve. Explicit schemes generally provide for an office and the ability to hire staff and contract for services.
- North Dakota provides general fund appropriations to the Department of Human Services to contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities (DD) case management services and to individuals diagnosed with a mental illness, traumatic brain injury, or elderly individuals aged 60 and over. North Dakota statutory provisions authorize judicial appointment of a county public administrator with duties and powers to serve as ex officio guardian and conservator in specified cases. This segregation may result in vulnerable individuals with dual or multiple diagnoses and eligibilities not receiving appropriate public guardian services.
- North Dakota provides that any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian. A question to the effectiveness of public guardianship is whether public and private guardianship agencies may petition for appointment of themselves as guardian. This is a potential conflict of interest.
- There are concerns regarding adult protective services and guardianship in North Dakota, including the lack of mandatory reporting of vulnerable adult abuse and neglect, and inconsistent adult protection services.
- Almost all of North Dakota's provisions for notice and hearing are comparable to the Uniform Guardianship and Adult Protective Proceedings Act. The most significant exception is the absence of provisions for informing the proposed ward or ward of rights at the hearing and of the nature, purpose, and consequences of appointment of a guardian.
- Some of the North Dakota guardianship stakeholders expressed concerns with the lack of right to counsel or public defender for the proposed ward if the proposed ward cannot afford counsel.
- Thirty-six states, including North Dakota, require "clear and convincing evidence" as the standard of proof in guardianship proceedings. The Model Public Guardianship Act recommends "clear, unequivocal, and convincing evidence" as the standard of proof.
- Several North Dakota guardianship stakeholders report insufficient physician specialists for clinical evaluations in guardianship proceedings.
- Twenty-seven states, not including North Dakota, have specific guardian background requirements like a credit check that disqualify felons from serving as guardian.
- At least 44 states specify a particular agency to serve as public guardian. North Dakota authorizes any appropriate government agency to serve a guardian as eighth priority except that an institution, agency, or nonprofit group home providing care and custody of the incapacitated person may not be appointed guardian. North Dakota also authorizes judicial appointment of a county public administrator with duties and powers to serve as ex officio guardian and conservator without application to court or special appointment in specified cases.
- Most state statutes provide that the public guardian has the same duties and general probate powers as any other guardian. Many state statutes also list additional duties and powers for the public guardian, such as requiring the public guardianship entity to maintain professional staff, contract with local or regional providers, and provide public information about guardianship and alternatives.
- Some North Dakota guardianship stakeholders expressed concerns about oversight and monitoring of guardians and guardian annual reports. Unlike a number of states, North Dakota does not have statutory provision for active court review of annual reports.
- Several North Dakota guardianship stakeholders expressed concerns with the temporary guardian statute. Compared with the emergency guardianship statutes in other states, North Dakota lacks required petition details, notice requirements, specific language about the right to a hearing pre and post order, right to counsel at the hearing, presence of the proposed ward at the hearing, limited duration, and specific language about the standard of proof.

Recommendations

- Adopt an explicit statutory scheme for public guardianship. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.
- Provide public guardian services for all eligible incapacitated persons similarly, and not public guardian services for only particular diagnoses or categories. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.
- Adopt a prohibition against the public guardian petitioning for appointment of itself.
- Change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect. (This recommendation is also included in Section II regarding the establishment of guardianships.)
- Adopt a version of the Uniform Guardianship and Adult Protective Proceedings Act notice provisions regarding rights at the hearing and the nature,

purpose, and consequences of appointment of a guardian.

- Adopt the recommendations of the Model Public Guardianship Act regarding the right to counsel and the duties of counsel representing the proposed ward at the hearing. (This recommendation is also included in Section II regarding establishment of guardians.)
- Adopt a right to trial by jury in guardianship proceedings.
- Consider changing the standard of proof in guardianship proceedings to "clear, unequivocal, and convincing evidence."
- Consider adopting the Model Public Guardianship Act provision regarding evaluation in guardianship. The provision provides that the alleged incapacitated person has the right to secure an independent medical or psychological examination relevant to the issues involved in the hearing at the expense of the state if the person is unable to afford such examination and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.
- Require information in the petition for appointment of a guardian and in the visitor's report about the qualifications of the proposed guardian to include the results of fingerprint, criminal history, and credit background checks before appointment of a guardian.
- Specify one public guardian agency to serve as public guardian, and make the agency independent from all service providers. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.
- Require guardians and guardian organizations to comply with the North Dakota Guardianship Standard 13(V) that the guardian of the person visit the ward monthly and the North Dakota Guardianship Standard 23 (III) that the guardian limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers.
- List additional duties and powers for the public guardian modeled after those in the Model Public Guardianship Act. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.
- Establish a system for active monitoring of guardianship annual reports, including filing and review of annual reports and plans.
- Adopt Section 311 of the Uniform Guardianship and Protective Proceedings Act related to emergency guardians regarding required petition details, notice, the right to hearing, the right to counsel, presence of the proposed ward at the hearing, limited duration, and the standard of proof. (This recommendation is also included in Section II regarding the establishment of guardianships.)

VII. Methods for the timely and effective delivery of guardianship and public administrator responsibilities and services - Determine the appropriate duties and responsibilities for entities involved in guardianship services, financial responsibilities, and the appropriate role for public administrators in providing guardianship services. Provide estimated costs for guardianship services for the 2013-15 biennium by recommended entity responsible for these costs.

Observations and Findings

- North Dakota has statutory provisions for guardianship of incapacitated persons and for county public administrators. Twenty-eight of North Dakota's 53 counties do not have a public administrator. The 2010 census population of the 28 counties is 151,026, which is 22.5 percent of North Dakota's population.
- One nonprofit corporation with offices in Bismarck is reportedly the public administrator for 12 counties. These 12 counties have a 2010 census population of 147,799 (21.9 percent of the state's population) and cover an area of 16,031 square miles.
- The lack of an adequate number of public administrators in North Dakota's counties suggests that delivery of public administrator responsibilities and services is currently untimely and ineffective.

Recommendations

- Implement a model for public guardianship based on the strengths and weaknesses of each model and the particular needs of North Dakota. The recommended prioritization of models for North Dakota is:

  Independent state office model - Establish a new state agency modeled after the North Dakota Commission on Legal Counsel for Indigents to provide public guardianship services.

  County model - Timely and effective public administrator responsibilities and services appear to require replacement of uneven county funding with state funding of a public administrator in each of North Dakota's 53 counties at a funding level that would reduce guardianship caseload ratio from the reported 1:22-29 on a part-time basis to a 1:20 staff-to-client ratio on a full-time basis.

  Alternative county model - Establish an independent office of public guardian within each of North Dakota's counties.

  Judicial model - Establish the public guardianship office as a division of the court that has jurisdiction over guardianship and conservatorship.

Estimated costs for the 2013-15 biennium

- Estimated costs for the 2013-15 biennium based on the 2011-13 legislative appropriation to the Department of Human Services for corporate guardianship and petitioning costs in the Developmental Disabilities Division range from $3.4 million to $4.5 million depending on the staff-to-client ratio.

Guardianship Services Delivery Model Preliminary Estimated Costs

The committee received and reviewed further information regarding preliminary estimated costs of implementing the proposed guardianship services delivery models. The estimates were preliminary and subject to change as determinations are made and additional information becomes available. The cost estimates varied from $1.2 million per biennium for the county model, $1.36 million per biennium for the alternative county model, $7.5 million per biennium for the independent state office model, and $8.2 million per biennium for the judicial model.

Responses to Findings and Recommendations

The committee received responses regarding the findings and recommendations included in the final report for guardianship services from the Department of Human Services, Supreme Court, North Dakota Association of Counties, Guardian and Protective Services, Inc., and committee members.

Department of Human Services

The Department of Human Services indicated the final report assumes the department's current contracted guardianship services would be moved to a new guardianship services model to avoid having multiple models in the state. There are questions on how individuals currently receiving guardianship services from the department would be affected by a change in the guardianship services model. If individuals are transferred to a different guardian, it is possible that court involvement would be required resulting in additional costs.

The department indicated that the recommendation to change from voluntary reporting of vulnerable adult abuse or neglect to mandatory reporting may affect the department's Vulnerable Adult Protective Services (VAPS) program. If mandatory reporting is approved, it would be necessary to review and address the impact to the VAPS program to ensure that report of exploitation and other concerns can be reviewed and assessed in an effective and timely manner.

The department also indicated that guardianship services differ based on the individual under guardianship. There are very different needs for individuals with developmental disabilities, a traumatic brain injury, or a serious mental illness and individuals who are elderly. The differences impact guardianship costs and affect the number of individuals a guardian can appropriately serve.

Supreme Court

The Supreme Court indicated the final report makes a number of recommendations to strengthen general procedural safeguards and emergency guardianship safeguards. The recommended changes could be incorporated into the current guardianship process with minor adjustments.

The Supreme Court supports the following recommendations included in the final report relating to the prevention of exploitation and abuse:

- Enact guardianship qualification requirements, such as requiring fingerprint, criminal history, and credit background checks before appointment as a guardian.
- Establish a system for monitoring guardianship annual reports, including filing and reviewing annual reports and plans.

The Supreme Court expressed concern with the following recommendations and also commented that they may add significant costs to the state:

- Provide the right to counsel to the proposed ward.
- Grant the alleged incapacitated person the right to secure an independent medical or psychological examination relevant to the issues involved in the hearing at the expense of the state if the person is unable to afford such examination and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.
- Adopt a right to trial by jury in guardianship proceedings.
- Change the standard of proof in guardianship proceedings to "clear, unequivocal, and convincing evidence."

North Dakota Association of Counties

The North Dakota Association of Counties indicated the committee should consider providing an appropriation to an appropriate state agency to establish a central "clearinghouse" to oversee guardians, provide training and assistance to guardians, and pay for private guardianship services in situations where an individual has no other resources.

Guardian and Protective Services, Inc.

Guardian and Protective Services, Inc., supported the recommendations in the final report. The organization met with representatives from the Supreme Court, North Dakota Association of Counties, Cass County Adult Protective Services Unit, AARP, guardianship agencies, and public administrators and suggested the following changes to guardianship and public administrator services:

Biennium	
2013-15	Amend emergency guardianship statutes. Transfer funding for public administrator services from the counties to the state through a general fund appropriation to the Office of Management and Budget with funds distributed through an annual grant process similar to the process provided in Section 54-06-20 or through a formula.

Biennium	
	Provide a $70,000 general fund appropriation to the Supreme Court for the development and delivery of training to new guardians.
2015-17	Require criminal background and credit history checks of all proposed guardians.
	Require court visitors to meet the proposed wards.
	Provide funding for a four-year pilot program relating to random checks of guardianship annual reports and personal visits with wards.
2017-19	Implement changes in the procedural process to require appointment of counsel for proposed wards.

The organization suggested the current system of providing corporate guardianship services to the developmentally disabled through the Department of Human Services Developmental Disabilities Division remains unchanged.

Committee Members

Representative Hogan suggested the committee consider the following enhancements to guardianship services:

Description	Total Estimated Biennial Cost of Proposal	Current 2011-13 Biennium Funding	Estimated Additional Funding Needed
Adult protection - Increase the number of FTE positions responsible for assessing the needs of vulnerable individuals, identifying alternatives to guardianship, and gathering information regarding family and local guardianship resources. Currently, these responsibilities are primarily being completed by Department of Human Services' adult protective services staff. For the 2011-13 biennium, the Legislative Assembly provided funding for four adult protective services FTE positions located at the human service centers. In the Southeast Human Service Center region, the counties provide funding for two additional adult protective services FTE positions. The proposal recommends providing funding for 12 new adult protective services FTE positions.	$1,647,002	$360,587	$1,286,415
Petition filing - Expand the guardianship services offered through the Department of Human Services Aging Services Division to assist low-income individuals with serious mental health issues or a disability	250,000	104,000	146,000
Guardianship services - Provide funding to contract with private entities to provide guardianship services to individuals not currently being served	517,000	0	517,000
Court monitoring - Provide funding for one new FTE position in the judicial branch to provide training and technical assistance to all court personnel on guardianship-related issues and to monitor and investigate complaints against guardians	314,495	0	314,495
Total	$2,728,497	$464,587	$2,263,910

Committee Considerations

The committee considered but did not recommend a bill draft to implement the suggestions of the North Dakota Association of Counties to provide for centralized guardianship services. The bill draft would have:

- Required the Department of Human Services to provide centralized guardianship services for vulnerable adults who are ineligible for developmental disabilities case management services. The centralized guardianship services are to include supervision of guardians, training and assistance, financial assistance to reduce the cost of guardianship services for individuals determined to lack adequate resources, and payment to public administrators. The department could have established an advisory board to assist with the development of guardianship standards and reporting requirements.
- Amended Section 11-21-08 to provide that public administrators receive compensation for services from the Department of Human Services' centralized guardianship services program.
- Repealed Section 50-06-24 relating to a unified system for guardianship services.
- Provided a $1.2 million general fund appropriation to the Department of Human Services for the centralized guardianship services program for the 2013-15 biennium.

The committee considered but did not recommend a bill draft to implement the suggestions of Representative Hogan relating to guardianship services program enhancements. The bill draft would have provided:

- A general fund appropriation of $1,286,415 to the Department of Human Services for providing adult protective services, including the assessment of the needs of vulnerable individuals, identification of alternatives to guardianship, and the compilation and dissemination of information regarding family and local guardianship resources for the 2013-15 biennium. The department would have been authorized 12 FTE positions for the initiative.
- A general fund appropriation of $146,000 to the Department of Human Services for providing for legal costs associated with the establishment of

guardianships for low-income individuals with serious mental illness, with a disability, or who are elderly for the 2013-15 biennium.

- A general fund appropriation of $517,000 to the Department of Human Services for contracting with private entities to provide guardianship services for the 2013-15 biennium.
- A general fund appropriation of $314,495 to the Supreme Court for providing training and technical assistance to court personnel on guardianship-related issues and monitoring and investigating complaints against guardians for the 2013-15 biennium. The Supreme Court would have been authorized one FTE position for the initiative.

Committee Recommendations

The committee recommends House Bill No. 1040 relating to guardianship services procedural safeguards as recommended in the guardianship services study final report. The bill:

- Amends Section 30.1-28-09 relating to notices in guardianship proceedings to provide that the notice or petition for guardianship must inform the ward or proposed ward of the ward's or proposed ward's rights at the hearing and must include a description of the nature, purpose, and consequences of an appointment of a guardian.
- Creates a new section relating to emergency guardians to provide that the court may appoint an emergency guardian whose authority may not exceed 60 days and who may exercise only the powers specified in the order. An emergency guardian may be appointed without notice to the alleged incapacitated individual and the alleged incapacitated individual's attorney only if the court finds from affidavit or other sworn testimony that the alleged incapacitated individual will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the alleged incapacitated individual, the alleged incapacitated individual must be given notice of the appointment within 48 hours after the appointment. The court may remove an emergency guardian at any time. An emergency guardian is to make any report the court requires.
- Repeals Section 30.1-28-10 relating to temporary guardians.

The committee recommends House Bill No. 1041 relating to the suggestions made by Guardian and Protective Services, Inc., for guardianship and public administrator services. The bill provides:

- A general fund appropriation of $1,657,100 to the Office of Management and Budget for the purpose of providing grants to counties for guardianship and public administrator services through an annual grant process or formula for the 2013-15 biennium.
- A general fund appropriation of $70,000 to the Supreme Court for developing and delivering guardianship training for guardians and public administrators for the 2013-15 biennium.

STUDY OF DEPARTMENT OF HUMAN SERVICES' CASELOADS AND PROGRAM UTILIZATION

The Human Services Committee was assigned a study of the causes of the increases in the Department of Human Services' caseloads and program utilization and the impact of federal health care reform as directed by 2011 Senate Concurrent Resolution No. 4020.

Background Information

The following schedules provide information regarding legislative appropriations for the Department of Human Services and information regarding various economic statistics for North Dakota.

Department of Human Services - History of Legislative Appropriations

Biennium	General Fund	Other Funds	Total
2001-03	$369,683,875	$1,047,421,972	$1,417,105,847
2003-05	$411,081,823	$1,097,801,932	$1,508,883,755
Increase (decrease)	$41,397,948	$50,379,960	$91,777,908
Increase (decrease) percentage	11.2%	4.8%	6.5%
2005-07	$484,421,474	$1,195,640,833	$1,680,062,307
Increase (decrease)	$73,339,651[1]	$97,838,901	$171,178,552
Increase (decrease) percentage	17.8%	8.9%	11.3%
2007-09	$593,916,230	$1,290,890,297	$1,884,806,527
Increase (decrease)	$109,494,756[2]	$95,249,464	$204,744,220
Increase (decrease) percentage	22.6%	8.0%	12.2%
2009-11	$652,145,814	$1,638,250,137	$2,290,395,951
Increase (decrease)	$58,229,584[3]	$347,359,840	$405,589,424
Increase (decrease) percentage	9.8%	26.9%	21.5%
2011-13	$932,025,219	$1,673,400,832	$2,605,426,051
Increase (decrease)	$279,879,405[4]	$35,150,695	$315,030,100
Increase (decrease) percentage	42.9%	21.4%	13.8%

[1]Major 2005-07 biennium general fund changes:

Additional state matching funds required due to changes in the state's federal medical assistance percentage (FMAP)	$35.1 million
Funding for inflationary increases for service providers of 2.65 percent for each year	6.1 million
Funding for increased costs and costs relating to expanding the secure services unit at the State Hospital	3.1 million
Other	29.0 million
Total	$73.3 million

[2]Major 2007-09 biennium general fund changes:

Additional state matching funds required due to changes in the state's FMAP	$9.1 million
Funding for inflationary increases for service providers of 4 percent for the first year of the biennium and 5 percent for the second year	20.7 million
Funding for state administration of child support enforcement activities	7.5 million
Funding for increasing the average wage of employees of developmental disabilities service providers	3.9 million
Other	68.3 million
Total	$109.5 million

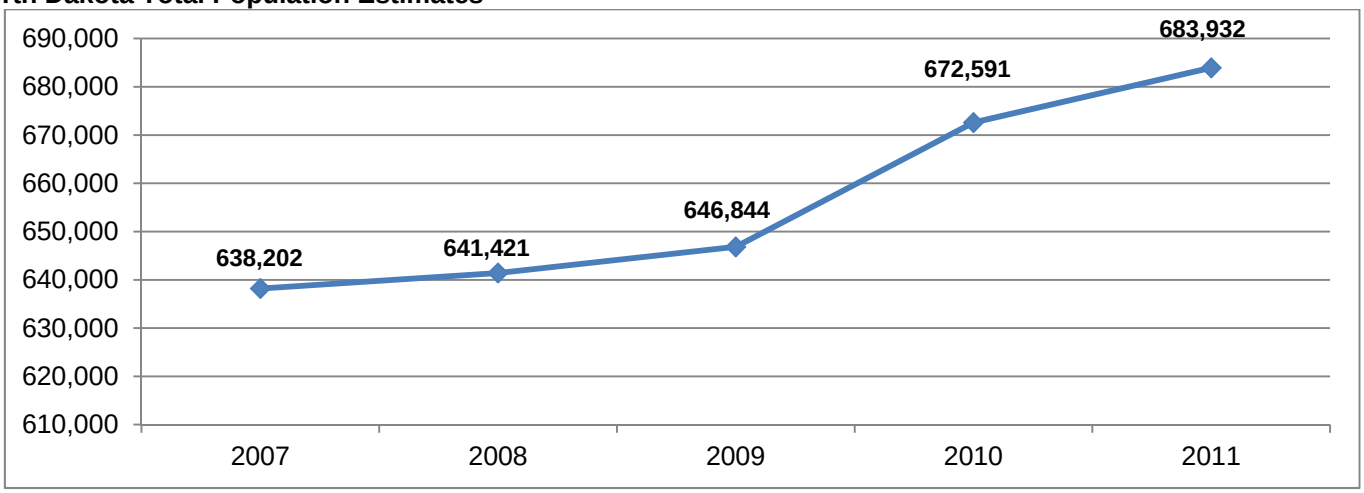
[3]Major 2009-11 biennium general fund changes:

Additional state matching funds required due to changes in the state's FMAP	$19.7 million
Funding source change from the general fund to federal funds due to the enhanced FMAP included in the American Recovery and Reinvestment Act of 2009	(66.5 million)
Funding of rebasing payment rates for hospitals, physicians, chiropractors, and ambulances	23.7 million
Funding for inflationary increases of 6 percent in the second year of the biennium for rebased services (hospitals, physicians, chiropractors, and ambulances) and dentists and a 6 percent annual increase for providers of other services	30.4 million
Funding for salary and benefit supplemental payments for individuals employed by basic care and nursing care facilities ($5.5 million) and individuals employed by developmental disabilities service providers ($7.1 million)	12.6 million
Other	38.3 million
Total	$58.2 million

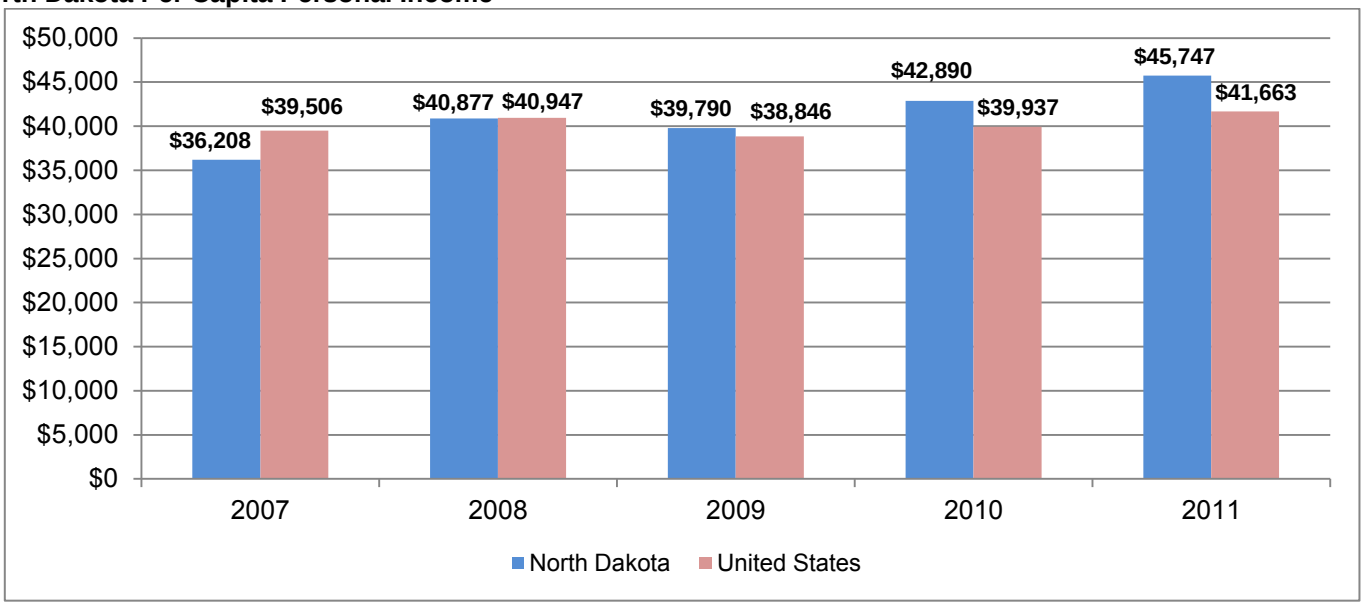
[4]Major 2011-13 biennium general fund changes:

Additional state matching funds required due to changes in the state's FMAP and replacing federal fiscal stimulus funding relating to FMAP appropriated for the 2009-11 biennium with funding from the general fund	$171.4 million
Funding for inflationary increases for human services providers, excluding physicians, of 3 percent per year	23.5 million
Funding for increasing the psychiatric inpatient hospitalization contract rates at the human service centers	3.4 million
Other	81.6 million
Total	$279.9 million

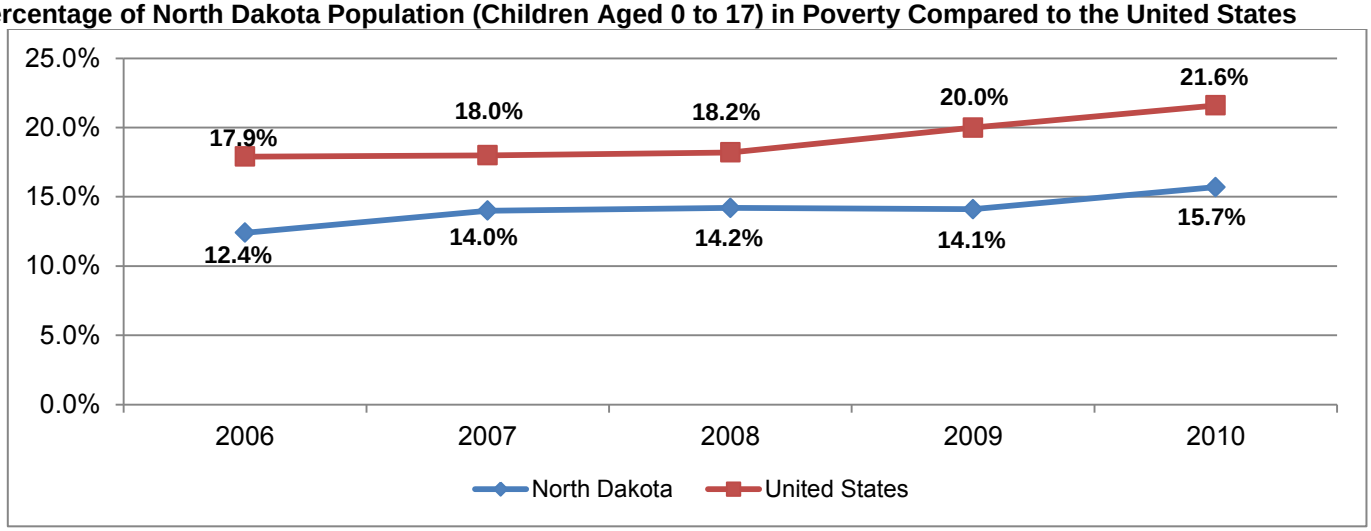
North Dakota Total Population Estimates



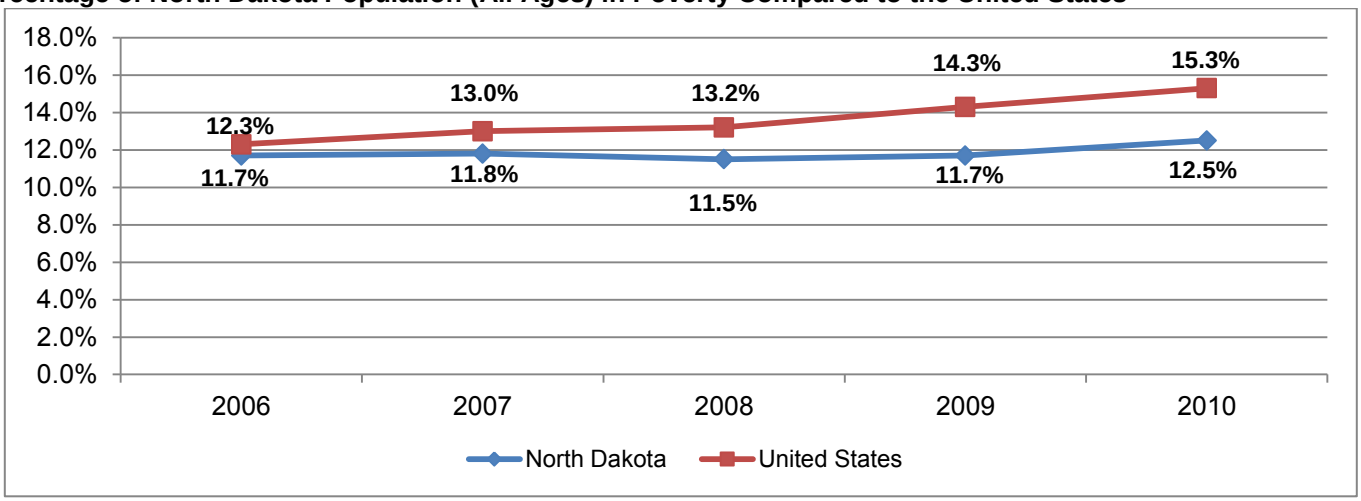
North Dakota Per Capita Personal Income



Percentage of North Dakota Population (Children Aged 0 to 17) in Poverty Compared to the United States



Percentage of North Dakota Population (All Ages) in Poverty Compared to the United States



Historical Caseloads and Program Utilization

The following schedules provide information regarding historical caseloads, program utilization, and reasons for caseload and utilization changes for the Department of Human Services Economic Assistance Division, Children and Family Services Division, Medical Services and Long-Term Care Continuum, human

services centers, State Hospital, and Developmental Center.

Economic Assistance Division

	Temporary Assistance for Needy Families (TANF)	Low-Income Home Energy Assistance Program (LIHEAP)	Child Care Assistance	Supplemental Nutrition Assistance Program (SNAP)
State fiscal year averages				
2006	2,708	5,737	4,060	19,214
2007	2,560	5,872	3,955	19,926
2008	2,590	5,732	4,054	21,572
2009	2,440	6,353	3,810	23,104
2010	2,147	6,265	3,787	26,686
2011	1,925	6,100	3,589	27,857
2012	1,738	5,269	2,526	27,439
Biennial averages				
2005-07	2,634	5,805	4,003	19,570
2007-09	2,515	6,042	3,932	22,338
2009-11	2,036	6,182	3,685	27,272
2011-13 (budget)	2,253	6,879	3,915	33,890

The committee learned:

- The TANF caseload has decreased over time due to the 2005 Deficit Reduction Act which identified work activities for adults in TANF families, the 2009 implementation of the pay after performance policy which requires recipients to meet work participation requirements, and the economic climate in North Dakota. At the time the budget for the 2011-13 biennium was established (summer of 2010), the projected caseload was decreased. However, the actual caseload from the summer of 2010 to the end of the biennium was even lower than anticipated.
- The LIHEAP caseload is developed based on weather projections and fuel price projections.
- The child care assistance caseload has decreased over time due to the economic climate in North Dakota. Increased household incomes have resulted in ineligibility or lower payments through the program. At the time the budget for the 2011-13 biennium was established (summer of 2010), the projected caseload was reduced. However, the actual caseload from the summer of 2010 to the end of the biennium was even lower than anticipated.
- The SNAP caseload has increased over time due to the 2006 implementation of simplified reporting, which makes it easier for households to be on the program for longer periods of time. In addition, federally required outreach efforts have also increased the number of SNAP cases, and the department has launched an online application making it easier for individuals to apply for and requalify for the program.

Children and Family Services Division

	Foster Care	Subsidized Adoption
State fiscal year averages		
2006	968	744
2007	869	816
2008	760	877
2009	768	946
2010	768	980
2011	736	1,028
2012	760	1,077
Biennial averages		
2005-07	918	780
2007-09	764	912
2009-11	752	1,004
2011-13 (budget)	861	1,073

The committee learned:

- The foster care caseload continues to experience fluctuations. Increases are due to population increases and the growing number of families in communities without parental or relative resources to assist in safely maintaining children in their homes. The caseload budgeted for the 2011-13 biennium includes a slight increase to address additional tribal Title IV-E cases and youth over the age of 18 who choose to remain in foster care.
- The subsidized adoption program for children with special needs continues to increase based on the federal mandate and practice of the permanency outcome of adoption for children formerly in foster care.

Medical Services and Long-Term Care Continuum

	2006 (Actual)	2007 (Actual)	2008 (Actual)	2009 (Actual)	2010 (Actual)	2011 (Actual)	2012 (Actual)	2011-13 (Budgeted)
Total Medicaid recipients	38,878	38,833	41,435	42,231	46,027	46,351	48,306	[1]
Medical services								
Inpatient hospital	909	843	1,228	1,151	1,229	1,188	1,118	1,227
Outpatient hospital	6,396	4,949	7,824	8,397	8,920	8,707	7,717	8,813
Physicians	17,667	15,542	20,171	21,436	23,806	23,538	22,095	24,360
Drugs (net)	19,883	15,907	Not available	Not available	18,580	19,240	19,162	17,854
Healthy Steps	3,278	3,764	4,006	3,470	3,368	3,718	3,872	4,026
Long-term care								
Nursing facilities (days paid)	110,289	126,222	109,182	102,286	100,684	99,635	97,423	102,058
Basic care (days paid)	27,025	25,647	25,761	27,470	30,856	35,334	37,252	32,651
Service payments for elderly and disabled (SPED)	1,240	1,321	1,434	1,360	1,299	1,278	1,215	1,350
Expanded SPED	127	116	109	106	116	122	139	137
Home and community-based services waiver	279	241	244	256	287	304	301	327
Targeted case management	342	342	427	416	460	494	474	488

	2006 (Actual)	2007 (Actual)	2008 (Actual)	2009 (Actual)	2010 (Actual)	2011 (Actual)	2012 (Actual)	2011-13 (Budgeted)
Personal care option	512	571	570	569	617	621	614	671
Technology dependent waiver			1	1	1	1	1	2
Medically fragile children's waiver				1	2	3	3	9
Partnership in assisting community expansion (PACE)				10	41	53	54	85
Children's hospice waiver							1	17
DD grants	2,765	3,027	3,131	3,235	3,326	3,293	3,554	[1]

[1]Recipient information is not available as budget is based on units of service for individual categories.

NOTE: The caseload information for nursing facilities and basic care represent the average number of days paid for recipients for a month. All other services represent recipients served.

The committee learned implementation of the following programmatic changes has resulted in increased caseloads and program utilization since 2006:

- The technology dependent waiver in August 2007.
- The medically fragile children's waiver in October 2007.
- The Medicaid buyin program for children with disabilities in April 2008.
- Twelve-month continuous eligibility for children in June 2008.
- PACE in August 2008.
- Eligibility increases in the Healthy Steps program to 150 percent of the federal poverty level in October 2008 and to 160 percent of the federal poverty level in July 2009.
- Changes in the SPED fee schedule in July 2009.
- The children's hospice waiver in July 2010.
- The autism spectrum disorder Medicaid waiver in October 2010.
- Developmental disabilities transitions to the community.

Human Service Centers

Human Service Centers	2006	2007	2008	2009	2010	2011	2012	Increase From 2006 to 2012
Northwest	1,189	1,202	1,263	1,342	1,545	1,650	1,833	644
North Central	3,293	3,105	3,215	3,197	3,225	3,325	3,398	105
Lake Region	2,486	2,396	2,373	2,318	2,484	2,607	2,373	(113)
Northeast	3,072	3,211	3,370	3,555	3,557	3,608	3,356	284
Southeast	4,952	5,018	5,029	4,968	5,102	5,042	4,949	(3)
South Central	2,869	2,802	2,958	2,991	3,074	3,236	3,182	313
West Central	4,542	4,559	4,913	5,027	5,348	5,655	5,532	990
Badlands	1,942	1,845	1,854	1,891	1,860	1,912	1,871	(71)
Total	24,345	24,138	24,975	25,289	26,195	27,035	26,494	2,149
Change from previous year		(207)	837	314	906	840	(541)	

The committee learned:

- For the Northwest Human Service Center, the increase is the result of population growth. The center experienced increases in the areas of psychiatry and medication management.
- For the North Central Human Service Center, the increase is the result of population growth. The center experienced increases in the number of children served in developmental disabilities and the demand for medication management.
- For the Lake Region Human Service Center, Southeast Human Service Center, and the Badlands Human Service Center, the decrease is due to a number of circumstances, including staff turnover, a change in referral patterns, and increased services available from private providers.
- For the Northeast Human Service Center, the increase is the result of increases in the number of children served in developmental disabilities and the infant development program, the number of homeless individuals at the mission, and the demand for alcohol and drug services.
- The South Central Human Service Center has experienced an increase in all core services over the past seven years primarily because the center is the only provider of outpatient behavioral health services in the region and because the State Hospital is located in the region.
- For the West Central Human Service Center, the increase is the result of population growth resulting in increases in the number of children served in developmental disabilities, referrals from the Department of Corrections and Rehabilitation, and the demand for psychiatry services due to a reduction in private sector services.

State Hospital

Average Daily Population				
Year	Traditional Services[1]	Sexual Offender Unit[2]	Tompkins Rehabilitation and Correction Center[3]	Total
2006	126	55	85	266
2007	130	53	83	266
2008	131	59	82	272
2009	110	58	79	247
2010	109	59	79	247
2011	110	60	86	256
2012	104	62	86	252

[1]The State Hospital utilizes 132 beds for inpatient and residential psychiatric services for the treatment of adults, children, and adolescents with serious and persistent mental illness, serious emotional disorders, and chemical addiction.

[2]The State Hospital operates a 76-bed sexual offender unit.

[3]The State Hospital utilizes 90 beds to provide addiction services to offenders in the Tompkins Rehabilitation and Correction Center.

Total Admissions				
Year	Traditional Services	Sexual Offender Unit	Tompkins Rehabilitation and Correction Center	Total
2006	806	9	301	1,116
2007	753	11	296	1,060
2008	816	6	289	1,111
2009	895	14	285	1,194
2010	956	20	305	1,281
2011	897	18	286	1,201
2012	897	41	315	1,253

The committee learned:

- The State Hospital's traditional services beds were highly occupied from 2006 to 2009 with an average daily occupancy of 97 percent. The major reasons for the high occupancy were the admission of first-time patients, chronic patients awaiting referral and placement at residential settings, and the increased need for treatment of patients with complex medical and psychiatric issues.
- The State Hospital's average daily population for traditional services declined to 85 percent for 2010 and 2011 and 80 percent for 2012. The reduction better aligns with the ratio of staff to patients as the hospital staffs for 85 percent occupancy. The decrease in average daily population is attributable to increased community service discharge options for chronic patients and shorter lengths of stay at the State Hospital.
- The Legislative Assembly in 2011 appropriated funding for the State Hospital based on a budgeted occupancy of 132 beds for traditional services, 76 beds for the sexual offender unit, and 90 beds for the Tompkins Rehabilitation and Correction Center.

Developmental Center

Adult Intermediate Care Services		
Date	Target Census	Actual Census
July 1, 2011	95	95
October 1, 2012	N/A	89
June 30, 2013	67	69 (projected)

The committee learned:

- The Developmental Center met the transition to community target of 95 adults in the intermediate care services program as of July 2011. The center had three discharges planned for January 2012 which would bring the center's population to 89 individuals. The center is projecting 20 more discharges for the remainder of the 2011-13 biennium which will bring the center's population close to the targeted census of 67 individuals for June 30, 2013.
- The Developmental Center operates an eight-bed youth transition services program for youth with developmental disabilities that have difficulty finding community placements or would need to be served out of state. The goal is to transition these young people to appropriate community settings.
- Section 8 of 2011 Senate Bill No. 2012 provides legislative intent that the department use any anticipated unexpended appropriation authority relating to developmental disabilities grants resulting from caseload or cost changes during the 2011-13 biennium for costs associated with transitioning individuals from the Developmental Center to communities during the 2011-13 biennium.

Effect of Federal Health Care Reform

Background Information

In March 2010 President Barack Obama signed into law two pieces of legislation to implement health care reform in the United States--the Patient Protection and Affordable Care Act (H.R.3590) and the Health Care and Education Reconciliation Act of 2010 (H.R.4872)--which together are referred to as the Affordable Care Act. The Affordable Care Act crafted new structural models to increase access and affordability of health care coverage, to improve operational governance of the health insurance industry, to provide consumers protection, and to provide new tools for the improvement of the health care delivery system and patient outcomes.

Committee Testimony

The committee received information on the potential effect of federal health care reform to the Department of Human Service's caseloads and program utilization. The committee learned:

- Effective January 1, 2014, states may expand Medicaid to include all individuals under age 65 (children, pregnant women, parents, and adults without dependent children) with incomes up to 133 percent of the federal poverty level based on modified adjusted gross income. In addition, the Patient Protection and Affordable Care Act authorizes an across-the-board 5 percent income disregard effectively making the income level 138 percent. Currently, North Dakota's Medicaid eligibility levels are 133 percent of the federal poverty level for pregnant women and children aged 0 to 6, 100 percent of the federal poverty level for children aged 6 to 19, and 83 percent of the federal poverty level for aged, blind, and disabled, parents and caretakers of deprived children, and children and pregnant women with catastrophic needs in families with incomes above the 100 percent or 133 percent poverty level.
- All newly eligible adults will be guaranteed a benchmark benefit package that at least provides the essential health benefits as defined for the health benefit exchange.
- The newly eligible population will be covered with 100 percent federal financing 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.
- In 2010 the Department of Human Services prepared a preliminary estimate of the impact of the Affordable Care Act, including the Medicaid expansion. The estimate included the impact of providing coverage for the newly eligible and

previously eligible, as well as coverage for children who may switch between the children's health insurance program and Medicaid and for the medically needy population. The preliminary estimate was that North Dakota expenditures could increase by $106 million through 2019 and that Medicaid enrollment could increase by as much as 50 percent. The department is in the process of reanalyzing the impact of the Medicaid expansion and the affiliated areas that was prepared in 2010. The new analysis will be available for the 2013 legislative session.

- The United States Supreme Court recently upheld the 2014 Medicaid expansion; however, the Court struck down the mandate providing that the federal government could withhold all federal Medicaid funding if a state chooses to not expand Medicaid. Therefore, the decision whether to expand the Medicaid program is left to each state.
- There will be impacts to the Medicaid program and Medicaid expenditures even if the state chooses not to expand Medicaid because the Affordable Care Act requirements to move to modified adjusted gross income eligibility requirements remain.

Department of Human Services - New Full-Time Equivalent Positions

During the November 2011 special legislative session, the Legislative Assembly authorized seven new FTE positions for the Department of Human Services to assist the department with the workload resulting from the Patient Protection and Affordable Care Act. The following is a summary of the status of the new positions:

Position	Requested Start Date	Actual or Anticipated Start Date
Economic assistance - Policy trainer	April 1, 2013	April 2013
Child support enforcement - Attorney	January 1, 2012	September 2012
Medical services - Eligibility policy	January 1, 2012	February 6, 2012
Medical services - Program integrity	January 1, 2012	January 17, 2012
Medical services - Nurse	October 1, 2012	October 2012
Medical services - Surveillance and utilization review system analyst	January 1, 2013	January 2013
Medical services - Administrative support	January 1, 2013	January 2013

Committee Recommendation

The committee made no recommendations regarding its study of the Department of Human Services' caseloads and program utilization.

STUDY OF THE QUALIFIED SERVICE PROVIDER SYSTEM

The Human Services Committee was assigned a study of the state's qualified service provider (QSP) system pursuant to Section 9 of 2011 Senate Bill No. 2012.

Qualified Service Providers

A QSP is an individual or agency providing care for people to enable them to continue to live in their own homes and communities. A QSP does not need a special certificate or license but needs skills necessary to provide care.

Types

There are two types of QSPs:

- An individual QSP needs to have competency in all the standards to provide a specific service. Individual QSPs are self-employed, independent contractors who are responsible to withhold or pay any Social Security, federal or state income tax, unemployment insurance, or workers' compensation insurance premiums from the payment received as a QSP.
- An agency QSP hires staff and is responsible for ensuring its staff has the skills necessary to provide a specific service. The agency QSP is also responsible for withholding or paying any Social Security, federal or state income tax, unemployment insurance, or workers' compensation insurance premiums relating to its employees.

As of October 18, 2012, the Department of Human Services had 1,734 enrolled QSPs--1,592 individual QSPs and 142 agency QSPs.

Enrollment and Services

To become enrolled as a QSP, an individual or agency must submit appropriate forms to the Department of Human Services. The department will provide the individual or agency with a provider number, instructions on how to bill for services provided, and rules about providing services as a QSP. Enrolled QSPs can choose to have their name added to a public list of QSPs, which is given to clients by county home and community-based services case managers. Home and community-based services recipients use this list to choose an individual or agency QSP. Once chosen, the QSP is authorized to provide services by the county case manager. The authorization provides the amount and type of care the QSP is approved to provide to the client.

Qualified service providers provide care to recipients receiving services from one or more of the following programs:

- SPED;
- Expanded SPED;
- Home and community-based services waiver;
- Technology dependent Medicaid waiver;
- Developmental disabilities (DD) Medicaid waiver; and

- Medicaid state plan personal care.

A QSP may provide the following services:

- Adult day care.
- Adult family foster care.
- Adult residential service.
- Case management.
- Chore service.
- Emergency response system.
- Environmental modification.
- Extended personal care/nurse education.
- Family personal care.
- Home-delivered meals.
- Homemaker service.
- Nonmedical transportation.
- Personal care.
- Respite care.
- Specialized equipment.
- Supported employment.
- Transitional living service.

The Department of Human Services had 2,708 clients served by QSPs in July 2012.

Payment Rates

The QSP may bill the individual who is provided care or the Department of Human Services for each 15-minute block of time during which services were provided. The QSP may not bill for time or expenses associated with travel because provider transportation is not considered a Medicaid benefit by the Centers for Medicare and Medicaid Services (CMS). The following is a summary of individual and agency QSP payment rates of the Department of Human Services in recent years:

	Individual Unit (15-Minute) Rate	Agency Unit (15-Minute) Rate
July 2007	$3.29	$4.68
July 2008	$3.45	$4.91
July 2009	$3.92	$5.47
July 2010	$4.16	$5.80
July 2011	$4.28	$5.97

The following is a summary of QSP service expenditures by program and funding source for the 2009-11 biennium:

Program	General Fund	Federal Funds	Other Special Funds	Total
Medicaid state plan personal care	$7,150,025	$15,852,467		$23,002,492
Targeted case management	401,377	876,520		1,277,897
SPED	11,081,443		$583,221	11,664,664
Expanded SPED	679,041			679,041
Home and community-based services waiver	2,616,244	5,751,139		8,367,383
Technology dependent Medicaid waiver	75,572	164,122		239,694
DD Medicaid waiver	316,664	693,558		1,010,222
Total	$22,320,366	$23,337,806	$583,221	$46,241,393

Testimony and Other Related Information

The committee learned the Department of Human Services has established a process by which individuals or agencies can report issues with QSPs and QSP care. A complaint can be either verbal or written. Complaints may include allegations of recipient self-neglect or allegations against a QSP, a family member, an agency, or any other individual. The department responds to all complaints within 14 days and seeks a resolution to all allegations. The following is a summary of QSP-related complaints and resolutions by the department from 2007 through 2011:

	2007	2008	2009	2010	2011
Complaints					
Absenteeism	1	3	3	3	1
Criminal activity	3	5	10	15	11
Abuse/neglect/exploitation	9	15	16	9	12
Billing inappropriately	9	20	23	24	18
Poor care	7	7	14	20	15
Case management unacceptable	6	2	0	2	4
Breach of confidentiality	1	0	2	0	1
Property damage	1	0	0	0	0
Theft	6	6	1	5	4
Disrespectful	0	2	1	1	1
Under the influence of drugs or alcohol	0	0	0	5	2
Self-neglect	0	0	0	0	4
Pending	0	4	0	0	0
Other	4	3	4	7	8
Total	47	67	74	91	81
Resolutions					
No action	3	6	2	0	0
Technical assistance	13	9	16	14	15
Recoup/refund payment	5	9	8	10	8
Terminated	9	17	19	41	33
Unsubstantiated	10	19	18	20	13
Pending	0	0	5	2	0
Other	7	7	6	4	12
Total	47	67	74	91	81

The committee learned the Department of Human Services is exploring the possibility of providing additional oversight of QSPs by making visits to the clients' homes to ensure that the care being delivered is meeting the competency standards. The additional oversight of QSPs would allow the department to talk with the clients about satisfaction with their care and to view the environment to determine if care is being delivered appropriately.

The committee learned QSPs must agree to keep accurate records regarding services provided and respond to compliance investigations. The Department of Human Services has an annual goal of completing detailed audits of approximately 5 percent of the enrolled QSPs. The department uses a targeted approach to select potential QSPs for audit. Home and community-based care staff refers QSPs for an audit based on irregular and unusual billing patterns, numerous billing errors, and recommendations from case managers. An audit may result in recoupment of funds, technical

assistance, or discontinuation of a QSP's employment. The following is an audit summary for 2007 through 2011:

Year	Number of QSPs Audited	Number of QSPs With Errors	Number of QSPs Employment Discontinued
2007	85	74	17
2008	86	71	5
2009	85	66	17
2010	85	68	13
2011	88	44	19

The committee received the following comments from QSPs and representatives of QSP agencies regarding the study of the QSP system:

- The committee should consider financial incentives to encourage individuals to become QSPs.
- Lack of adequate funding has forced many home health care agencies to discontinue their QSP services. The committee should consider the possibility of increasing the QSP rates for home health services.
- The committee should consider the possibility of providing a rate increase for QSPs working nights, evenings, and weekends and QSPs traveling to rural areas.
- The committee should consider allowing county case managers to provide additional funding to QSPs willing to work in underserved areas.
- The QSP system needs improvements to be effectively used in the future as a better option to assist the elderly and individuals with disabilities. The following barriers have been identified:

  Many individuals are not offered the option of receiving home and community-based care services.

  Delays occur when setting up QSP services for individuals seeking services.

  Standardized training for QSPs is lacking.

  Access to nursing consultations is lacking for medically-complicated individuals.

  Delays occur in responding to questions on the application and billing process.

The committee received testimony from the Department of Human Services regarding cost estimates for increasing QSP rates by $1 per hour and providing reimbursement for mileage. The committee learned the estimated cost of increasing QSP rates by $1 per hour for the 2013-15 biennium is as follows:

	General Fund	Federal Funds	County Funds	Total
SPED	$1,843,636		$97,034	$1,940,670
Expanded SPED	94,232			94,232
Medicaid waivers	480,673	$484,340		965,013
DD	74,828	75,399		150,227
Medicaid state plan personal care services	755,133	760,894		1,516,027
Total	$3,248,502	$1,320,633	$97,034	$4,666,169

The committee learned the estimated cost of implementing a QSP rate differential to provide reimbursement for mileage for any round trip over 20 miles for the 2013-15 biennium is as follows:

	General Fund	Federal Funds	County Funds	Total
Agency QSPs	$2,704,957	$790,447	$90,453	$3,585,857
Individual QSPs	844,946	246,913	28,256	1,120,115
Contract service for review and compliance	77,957	22,043		100,000
Total	$3,627,860	$1,059,403	$118,709	$4,805,972

The committee learned any increases to QSP rates would require approval from CMS.

Committee Recommendation

The committee recommends the Legislative Assembly and the Department of Human Services establish a QSP payment rate structure that provides additional funding for mileage.

OTHER RESPONSIBILITIES

Children's Health Insurance Program Reports

Section 50-29-02 provides that the Department of Human Services is to prepare, submit, and implement a children's health insurance program state plan and report annually to the Legislative Management and describe enrollment statistics and costs associated with the plan. The Legislative Management assigned the responsibility to receive this report to the Human Services Committee.

Background Information

Healthy Steps--North Dakota's children's health insurance plan--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 full Medicaid coverage, but not enough to afford private insurance. To be eligible for the program, the family's net income may not exceed 160 percent of the federal poverty level.

The following schedule summarizes legislative appropriations for the Healthy Steps program since 2003:

	General Fund	Federal Funds	Total
2003-05	$2,127,162	$7,359,222	$9,486,384
2005-07	$2,895,233	$9,180,309	$12,075,542
2007-09	$4,669,885	$15,534,861	$20,204,746
2009-11	$5,598,799	$16,033,737	$21,632,536
2011-13	$8,517,391	$19,007,011	$27,524,402

The following schedule summarizes the federal medical assistance percentage (FMAP) and North Dakota's allocation of federal funds for the Healthy Steps program:

Federal Fiscal Year Ending	FMAP[1]	North Dakota Allocation
September 30, 2003	77.85%	$5,437,000
September 30, 2004	77.82%	$5,437,000
September 30, 2005	77.24%	$6,384,719
September 30, 2006	76.10%	$6,346,156
September 30, 2007	75.30%	$7,737,529
September 30, 2008	74.63%	$11,017,680[2]

Federal Fiscal Year Ending	FMAP[1]	North Dakota Allocation
September 30, 2009	74.21%	$15,821,554
September 30, 2010	74.11%	$16,595,628
September 30, 2011	72.25%	$15,257,665
September 30, 2012	68.78%	$16,063,553 (estimate)
September 30, 2013 (estimates)	66.59%	$17,204,487
September 30, 2014 (estimates)	65.00%	$18,311,337
September 30, 2015 (estimates)	65.00%	$18,311,337

[1]The federal fiscal relief FMAP was in effect for five quarters--April 2003 through June 2004.

[2]This amount includes one-time additional federal funding of $3,128,684.

The schedule below summarizes the average annual recipients and premium rates in effect for the majority of the year for the majority of children covered:

State Fiscal Year Ending	Average Annual Recipients	Monthly Average Premium Rates
June 30, 2005	2,322	$154.78
June 30, 2006	3,329	$181.90
June 30, 2007	3,821	$183.45
June 30, 2008	4,006	$202.32
June 30, 2009	3,470	$204.03
June 30, 2010	3,368	$229.18
June 30, 2011	3,718	$232.82
June 30, 2012	3,872	$272.69
June 30, 2013	4,085 (estimate)	$272.67 (estimate)

Testimony

The committee received an annual report from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan. The committee learned 3,996 children were enrolled in the program as of September 2012. The following is a summary regarding the status of the program's legislative appropriation for the 2011-13 biennium:

2011-13 Legislative Appropriation	2011-13 Expenditures Through September 2012	Percentage of 2011 Legislative Appropriation Used
$27,524,402	$14,834,017[1]	53.89%[2]

[1]Of this amount, $4,706,335 is from the general fund, and $10,127,682 is from federal funds.

[2]Fourteen months or 58.33 percent of the 2011-13 biennium has expired.

Health Information Technology Report

The committee was assigned to receive a report from the Health Information Technology Advisory Committee by June 30, 2012, regarding the outline on how best to standardize drug prior authorization request transactions between providers and the payers, insurance companies, and pharmacy benefit managers pursuant to Section 2 of 2011 House Bill No. 1422.

Background Information

Section 23-01-38 provides that:

- Effective August 1, 2013, a drug prior authorization request must be accessible to a health care provider with the provider's electronic prescribing software system and must be accepted electronically, through a secure electronic transmission, by the payer, by the insurance company, or by the pharmacy benefit manager responsible for implementing or adjudicating or for implementing and adjudicating the authorization or denial of the prior authorization request.
- Effective August 1, 2013, electronic transmission devices used to communicate a prescription to a pharmacist may not use any means or permit any other person to use any means, including advertising, commercial messaging, and popup advertisements, to influence or attempt to influence, through economic incentives, the prescribing decision of a prescribing practitioner at the point of care. Such means may not be triggered by or be in specific response to the input, selection, or act of a prescribing practitioner or the prescribing practitioner's staff in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy. Any electronic communication sent to the prescriber, including advertising, commercial messaging, or popup advertisements, must be consistent with the product label, supported by scientific evidence, and meet the federal Food and Drug Administration requirements for advertising pharmaceutical products.
- Electronic prescribing software may show information regarding a payer's formulary if the software is not designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

Section 2 of 2011 House Bill No. 1422 provides that during the 2011-12 interim, the Health Information Technology Advisory Committee is to establish an outline on how best to standardize drug prior authorization request transactions between providers and the payers, insurance companies, and pharmacy benefit managers responsible for adjudicating the authorization or denial of the prescription request. The outline must be designed with the goal of maximizing administrative simplification and efficiency in preparation for electronic transmissions and alignment with standards that are or will potentially be used nationally.

Testimony

The committee received testimony from a representative of the Health Information Technology Office and learned the office has formed a workgroup consisting of legislators, pharmacists, State Board of Pharmacy members, payers, and industry experts. The workgroup is discussing the needs for prior authorizations and is monitoring activities of the National Council for Prescription Drug Programs regarding the establishment of a national standard. The workgroup believes adopting a national standard is more beneficial than creating a state-specific standard.

Dementia Care Services Program Reports

The committee was assigned to receive periodic reports from the Department of Human Services regarding the status of the dementia care services

program pursuant to Section 5 of 2011 Senate Bill No. 2012.

Background Information

The 2007-08 interim Long-Term Care Committee studied the availability of and future need for dementia-related services and funding for programs for individuals with dementia. The committee learned the following services are available for individuals with dementia:

- Skilled nursing facilities.
- Assisted living/basic care facilities.
- In-home care providers.
- Adult day care programs.
- Adult foster care.
- Medical professionals.
- Support groups.
- Care consultation/geriatric case managers.

The committee recommended House Bill No. 1043, which was approved by the Legislative Assembly in 2009. The bill:

- 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 for the 2009-11 biennium.

The 2009-10 interim Long-Term Care Committee received reports from the Department of Human Services regarding the dementia care services program and learned that the department entered a contract with the Alzheimer's Association for provision of a dementia care services program in each area of the state served by a regional human service center. The association hired five regional care consultants to provide services in the state. The consultants are responsible for networking with other agencies and organizations to coordinate efforts, developing referral processes, and assuring that services are not duplicated.

2011-12 Status Report

The committee received testimony from representatives of the Department of Human Services and the Alzheimer's Association regarding the dementia care services program and learned the Legislative Assembly in 2011 provided a $1.2 million general fund appropriation to the Department of Human Services for continuing the dementia care services program for the 2011-13 biennium. The goal of the program is to inform people with dementia and their caregivers about dementia care issues which may lead to decreased depression, increased family support, delays in nursing home placement, and a reduction in inappropriate use of health services. To achieve the goal, the staff provides care consultation services to people with dementia and their caregivers, including needs assessment, care plan development, resource referral, emotional support, dementia education, and followup as needed. The program also provides education for communities, professionals, and law enforcement agencies regarding the symptoms of dementia, the benefits of early detection and treatment, and the services available to individuals with dementia and their caregivers.

The committee learned the Alzheimer's Association's contract with the department for the dementia care services program for the 2011-13 biennium provides that the following outcomes be achieved:

- 1,275 assessments of persons with the disease;
- 815 care consultants for 1,630 families;
- 258 caregiver education classes;
- 16 law enforcement training sessions;
- 600 contacts with primary medical providers to stress the importance of early detection and support; and
- 758 education and outreach activities providing information to communities and the general public.

The committee learned the Alzheimer's Association subcontracts with the University of North Dakota (UND) Center for Rural Health to study and report outcomes of the dementia care services program, including the estimated long-term care and health care costs avoided and the improvement in disease management and caregiver assistance. The UND Center for Rural Health reported an estimated cost avoidance of $14,167,102 in long-term care costs from July 2011 through June 2012.

Developmental Disabilities Reimbursement System Reports

The committee was assigned to receive reports from the Department of Human Services and its steering committee beginning in June 2012 regarding the development of a new developmental disabilities reimbursement system pursuant to Section 1 of 2011 Senate Bill No. 2043.

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 calculation 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 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 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 2009-10 interim Long-Term Care 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 challenged. 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 rates are set, targeted appropriations tied to six specific categories of adults and children who are medically fragile or behaviorally challenged 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 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 costs, 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.

The committee learned that the Department of Human Services contracted with Burns & Associates, Inc., to complete the study. The following is a summary of findings and recommendations by Burns & Associates, Inc.:

Assessment findings and recommendations	Discontinue use of the Oregon behavioral assessment for both children and adults. The Oregon medical assessment does not 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 & 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

	Options A and D		Options B and C	
	Low	High	Low	High
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 agreed with the recommendation to move to a prospective reimbursement process using an independent ratesetting and resource allocation model for the entire developmental disabilities client base. The department recommended hiring a consultant to guide the ratesetting and assessment implementation process and to begin implementation with a pilot project.

The committee recommended Senate Bill No. 2043, which was approved by the Legislative Assembly in 2011. The bill provided that:

- The Department of Human Services, in conjunction with developmental disabilities service providers, develop a prospective or related payment system with an independent rate model utilizing the supports intensity scale.
- The department establish a steering committee consisting of representatives from all interested providers and department representatives. The steering committee is to guide the development of the new payment system, including assisting a consultant to conceptualize, develop, design, implement, and evaluate a new payment system.
- The department contract with a consultant by September 1, 2011, to develop, in collaboration with the steering committee, the payment system and the resource allocation model tying funding to support intensity scale assessed needs of clients.
- After the prospective or related payment system rates are developed, the new rates must be tested on a sampling of clients and providers, the sample to be determined by the steering committee, allowing sufficient time to capture provider cost, client-realized need, and service provision data. The consultant is to provide the appropriate sampling number to sufficiently test the rates, types of services, and needs of clients with the intent to include as many providers as fiscally feasible.
- The department contract with a team of supports intensity scale assessors by September 1, 2011. The team is to begin assessing immediately the client pilot group identified by the consultant.
- Once testing is complete, the data must be analyzed by the consultant, and the consultant is to make any needed rate adjustments, resource allocation modifications, or process assumptions.
- Implementation of any system developed may not occur before the implementation of the department's new Medicaid management information system.
- Beginning in June 2012, the department and the steering committee report development activities and state information to an interim legislative committee.

Status of Development of the New Reimbursement System

The committee received testimony from representatives of the Department of Human Services regarding the development of a new developmental disabilities reimbursement system. The committee learned the department has established a steering committee consisting of representatives from all interested providers and the department to guide the development of the new payment system. The department awarded a contract in the amount of $445,903 to Johnston, Villegas-Grubbs and Associates, LLC., for development of the payment and the resource allocation model connecting funding to supports intensity scale assessed needs of clients. In addition, the department awarded contracts to the Rushmore Group in the amount of $846,000 and the American Association of Intellectual and Developmental Disabilities in the amount of $166,664 for completion and analysis of the supports intensity scale assessments.

The committee learned Johnston, Villegas-Grubbs and Associates, LLC, presented draft rates and a draft provider-specific budget impact analysis to the steering committee in June 2012. The vendor is in the process of revising the draft rates and budget impact analysis based on feedback received from the steering committee. The department will continue to work on the new DD reimbursement system into the 2013-15 biennium and expects to implement the new rate structure in the later part of the 2013-15 biennium.

Substance Abuse Services Pilot Voucher Payment Program Report

The committee was assigned to receive a report from the Department of Human Services before September 30, 2012, of preliminary findings and recommendations regarding the department's comprehensive review of the substance abuse services pilot voucher payment program pursuant to Section 2 of 2011 Senate Bill No. 2326.

Background Information

Senate Bill No. 2326 (2011) provides that the Department of Human Services is to establish and administer a pilot voucher payment program to provide substance abuse services for the 2011-13 biennium. The program must consist of voucher use and private choice as a method of providing substance abuse services to beneficiaries, and must allow a voucher to be submitted to the beneficiary's provider of choice for payment of substance abuse services. The department is to develop service agreements with substance abuse service providers licensed and accredited by the state to offer services in exchange for vouchers, which may be presented to the department for payment as provided for in the agreement. The payment amount may not exceed the cost of the same service provided by the state. The program must be developed to improve access to substance abuse services. The department is to apply for funding available through a federal access to recovery grant program available from the federal substance abuse and mental health services

administration center for substance abuse treatment. All money received by the department through the federal access to recovery grant for the pilot program is appropriated to the department for costs associated with the program. If the federal access to recovery grant funding is not available to the department, the department is not required to implement the pilot voucher payment program.

The committee learned the department is to perform a comprehensive review of the substance abuse services pilot voucher payment program for the 2011-13 biennium. The review must include information regarding the cost of substance abuse services provided through the pilot voucher payment program compared to the cost of similar substance abuse services provided during the 2011-13 biennium. The review must also analyze the effect of the substance abuse services pilot voucher payment program on access to care and outcomes.

Testimony

The committee received testimony from representatives of the Department of Human Services regarding the substance abuse services pilot voucher payment program. The committee learned the federal substance abuse and mental health services administration center for substance abuse treatment does not anticipate an Access to Recovery grant announcement for three years. As a result, the department will not implement the program but will continue to monitor the grant's potential announcement.

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 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 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 (OMB) 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 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 of 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.

Committee members were Representatives Robin Weisz (Chairman), Randy Boehning, Keith Kempenich, Corey Mock, Gary Paur, and Roscoe Streyle; Senators Joe Miller, Larry Robinson, Donald Schaible, Margaret Sitte, and Rich Wardner; and Chief Information Officer Lisa Feldner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd 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 2011-13 biennium. The plan includes 22 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:

Business Perspectives	Objectives	Key Performance Indicators
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	Customers that agree the department is aligned with its mission Customers that agree the department is a trusted business partner Customers that choose the department as their preferred provider of strategic information technology services Customers that agree the department delivers information technology services that meet business needs Customers that agree the department is easy to do business with Customers that are satisfied with their interactions with the department Incidents and service requests that are quickly acknowledged and completed within estimated timeframes Enterprise architecture future states that are up-to-date Information technology plans created and submitted on time by agencies
Financial	Make cost-effective investments Manage revenue Align rates with customer business needs Manage statewide technology spending	The department's total net assets do not exceed two times the average monthly expenditures. The department's rates for select services are equal to or lower than private sector. The department evaluates information technology spending as a percentage of state spending.
Internal processes	Standardize processes and approaches Deliver solutions on schedule and on budget Deliver reliable and available services 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	The statewide network is secure and available to customers anytime and anywhere. Enterprise services are delivered within service level agreements.
Learning and growth	Attract and hire quality people Maintain high employee satisfaction Support employee growth and development Retain talented employees	Time to fill vacant positions is less than 60 days. Employee satisfaction index is 2 or higher (based on a scale of 1 (dissatisfied) to 3 (satisfied)). Controllable employee turnover is less than 6 percent.

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 the 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** - $.62 per second	**Batch CPU** - $1.11 per second	**Batch CPU** - $2.15 per second	**Batch CPU** - N/A
	CICS CPU - $.62 per second	**CICS CPU** - $1.11 per second	**CICS CPU** - $.60 per second	**CICS CPU** - N/A
	ADABAS CPU - $.62 per second	**ADABAS CPU** - $1.11 per second	**ADABAS CPU** - $1.14 per second	**ADABAS CPU** - N/A
	TSO CPU - $.62 per second	**TSO CPU** - $1.11 per second	**TSO CPU** - $2.28 per second	**TSO CPU** - N/A
Network fees	**Device fee** - $49 per device per month	**Device fee** - $54 per device per month	**Device fee** - $49.06 per device per month	**Device fee** - $50 per device per month
	Local area network administrative fee - N/A	**Local area network administrative fee** - N/A	**Local area network administrative fee** - $120.29 per hour	**Local area network administrative fee** - $105
	Access, information, enterprise management fee - N/A	**Access, information, enterprise management fee** - $53 per device per month	**Access, information, enterprise management fee** - N/A	**Access, information, enterprise management fee** - $85 per device per month
	DSL service - Cost plus $175/5mb	**DSL service** - Actual cost	**DSL service** - $410.49/1.5mb	**DSL service** - Cost plus 15 percent
	ETS-5 service - $765 per month	**ETS-5 service** - Actual cost	**ETS-5 service** - $1,744.78 per month	**ETS-5 service** - Cost plus $140 (access) $150/mbps (bandwidth)

Telephone Fees	
North Dakota Information Technology Department rates	Telephone line - $24 per device per month (Voice over Internet Protocol)
	Speaker and display function - $5 per month
	Voice mail (unlimited) - $5 per month
South Dakota Bureau of Information and Telecommunications rates	Telephone line - $15 per device per month (analog)
	Speaker and display function - Actual cost
	Voice mail (unlimited) - $6 per month
Montana Information Technology Services Division rates	Telephone line - $30.51 per device per month (Voice over Internet Protocol)
	Speaker and display function - Included in fee
	Voice mail (three-minute limit) - $7.39 per month
	Voice mail (additional minutes) - $9.03 per month
Minnesota Office of Enterprise Technology rates	Telephone line - $35 per device per month (Voice over Internet Protocol)
	Speaker and display function - Actual cost
	Voice mail (unlimited) - $5 per month

Long Distance	
North Dakota Information Technology Department rates	In state - $.07 per minute Out of state - $.07 per minute 800 service - $.07 per minute
South Dakota Bureau of Information and Telecommunications rates	In state - $.07 per minute Out of state - $.08 per minute 800 service - $.08 per minute
Montana Information Technology Services Division rates	In state - $.071 per minute Out of state - $.071 per minute 800 service - $.081 per minute
Minnesota Department of Administration rates	In state - $.049 per minute Out of state - $.07 per minute 800 service - $.13 per minute

Software Development		
	Location	**Billing Rate Per Hour of Service**
Information Technology Department	Bismarck, ND	$67 to $89
Applied Engineering, Inc.	Bismarck, ND	$88 to $102
Eide Bailly LLP	Bismarck, ND	$90 to $165
Enterprise Solutions, Inc.	Bismarck, ND	$90 to $130
Nexus Innovations	Bismarck, ND	$94 to $140
Agency MABU	Bismarck, ND	$75 to $77
Ardent Technologies	Dayton, OH	$55 to $77
PiOrion Solutions	Piscataway, NJ	$84 to $128
Compuware	Plymouth, MN	$80 to $151
ImageSource	Olympia, WA	$174 to $228

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 2012)	Target
Acceptable level of total net assets (ratio of total net assets to average monthly expenditures)	2009 - 1.7 2010 - 2.4 2011 - 1.7	2.1	< or = to 2
Percentage of Information Technology Department rates reported in the annual report that are competitive	2009 - 100% 2010 - 100% 2011 - 100%	100%	100%
Total number of customer projects and service requests completed:	2011		
• Service requests	36,871	40,949	Monitor
• Incidents	63,795	67,598	Monitor
Customer satisfaction indexes (percentages satisfied or very satisfied) related to:	2010 - 2011		
• Value	87.0% - 80.4%	84.6%	92%
• Timeliness	91.6% - 87.5%	79.1%	97%
• Quality	95.7% - 94.6%	89.6%	97%
• Knowledge	95.8% - 96.4%	92.5%	98%
• Professionalism and courtesy	98.9% - 100%	97%	100%
Employee satisfaction index (Scale is zero dissatisfied to three very satisfied)	2009-10 - 2.21 2010-11 - 2.21	2.2	2.0
Controllable employee turnover	2010 - 5.0% 2011 - 4.9%	6.9%	Below 6%
Percentage of service levels met	To be determined	To be determined	100%
Percentage of strategic business plan objectives completed or on schedule	2010 - 47% 2011 - 66%	49%	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
Application software	3
Communications	2
Data and information	5
Desktop	6
Document management	6
E-government	8
Geographic information systems	1
Information technology procurement	2
Project management	3
Records management	4
Security	12
Servers and storage	1
Enterprise architecture	1
Total	54

INFORMATION TECHNOLOGY PLANS

Section 54-59-11 requires every executive branch agency, except institutions under the control of the State Board of Higher Education, to prepare an information technology plan unless the Chief Information Officer grants an exemption. 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 Legislative Assembly in 2013. 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 OMB 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 54-35-15.2 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 stages--project origination, project initiation, project planning, project execution and control, and project closeout. The following is a summary of the project management life cycle stages and activities relating to planning and executing major information technology projects:

Project Management Lifecycle Stages	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, submit their information technology plan, including project information, to the Information Technology Department, 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

Project Management Lifecycle Stages	Activities
	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 two categories: (1) Projects requesting funds from the **general fund** for the investment or the ongoing maintenance costs. (2) Projects requesting funds from **special funds and federal 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 OMB 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

Project Management Lifecycle Stages	Activities
	Committees of the Legislative Assembly. 7. The Legislative Assembly selects projects to be funded in the legislatively approved budget. 8. The Information Technology Department conducts a preliminary architectural review for projects funded and provides a recommendation to agencies regarding proceeding with the project. 9. Agencies refine the business cases as appropriate for those projects funded in the legislatively approved budget. 10. Agencies submit a copy of the final business case for a project to the Information Technology Department.
Project initiation - Define the overall parameters of a project and establish the appropriate project management and quality environment required to complete the project	11. 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. 12. 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	13. 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. 14. Agencies submit a copy of the project plan to the Information Technology Department after the plan has been approved by the project sponsor. 15. 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 Management Lifecycle Stages	Activities
Project execution and control - Develop the project or service that the project was commissioned to deliver	16. 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. 17. 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. 18. 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. 19. 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	20. 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. 21. 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. 22. Agencies submit a copy of the postimplementation review to the Information Technology Department. 23. 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.

The committee learned on July 6, 2011, Governor Jack Dalrymple signed Executive Order 2011-20 relating to large information technology project contracting and monitoring. For the purposes of the executive order, a large information technology project is a project with an estimated total cost of at least $1 million. The executive order provides that:

- Before an executive branch state agency, excluding an agency of an elected official, issues a request for proposal or enters a contract for a large information technology project, a committee of subject matter experts must review the request for proposal or contract. The committee of subject matter experts consists of an information technology contract attorney from the Attorney General's office, an Information Technology Department procurement officer, an Information Technology Department project management subject matter expert, the project sponsor, and one optional member at large from the procuring agency. At least three votes in favor of a recommendation of approval are needed before the request for proposal or contract may be forwarded to an executive steering committee for the project.
- An executive steering committee for each large information technology project must include the agency head of the contracting agency, the Director of OMB, the Chief Information Officer, the project sponsor, and a large project oversight analyst. Four affirmative votes are required to make any project decisions relating to contracts, budgets, or scope changes deemed by any one member to be a major project decision.
- The contracting agency head and the Chief Information Officer must both sign all contracts, amendments, and scope changes as directed by the executive steering committee.
- Quarterly meetings will be held at a time to be determined by the Governor's office to review the status of all pending large information technology projects.

Review of Major Information Technology Projects

For major information technology projects in progress during the 2011-12 interim, the committee received and reviewed quarterly status reports compiled by the Information Technology Department, project startup and project closeout reports, 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**
Office of Management and Budget	North Dakota public reporting website project	Implementation of a publicly available searchable budget database website	$317,232	July 2011
Information Technology Department	North Dakota statewide longitudinal data system	Implementation of a prekindergarten through postsecondary education data system	$4,691,649	March 2015
State Department of Health	North Dakota immunization information system interoperability project	Integration of the North Dakota immunization information system with electronic health records systems in the state	$620,021	April 2012
State Department of Health	Program reporting system	Implementation of updates to the current program reporting system	$289,100	July 2011
Department of Human Services	5010 legacy project	Enhancements to the Medicaid management information system (MMIS) and pharmacy point-of-sale system due to federal regulations	$1,232,462	July 2011
Job Service North Dakota	*JobsND.com* rewrite project	Rewrite of the *jobsND.com* website	$290,000	July 2011
Job Service North Dakota	Interactive voice response system rewrite	Replacement of the current obsolete interactive voice response system	$1,439,541	December 2011
Bank of North Dakota	North Dakota college access network project	Outreach to Native American students regarding attending and paying for college	$321,500	December 2011
Department of Public Instruction	E-transcripts project	Implementation of an electronic transcript system to improve communication between kindergarten through grade 12 schools and postsecondary institutions to better serve the students	$502,000	June 2013
Office of Management and Budget	PeopleSoft talent management project	Implementation of the PeopleSoft talent management suite to provide state agencies with access to an online system for performance evaluations, succession planning, and career planning	$745,336	June 2012
Secretary of State	Data processing project (new)	Implementation of a web-based software system to manage the agency's processes for central indexing, licensing and registrations, and campaign finance	$3,468,428	October 2014
Office of Management and Budget	PeopleSoft environment partitioning project	Separation of the PeopleSoft hosting environments for state government and higher education	$500,000	July 2012
Department of Transportation	Automated commercial driver's license road test project	Replacement of the current paper-based process with built-in global positioning software	$424,431	July 2012

Project Startup Reports				
Agency	**Project Name**	**Project Description**	**Estimated Cost**	**Estimated Completion Date**
Job Service North Dakota	Workforce Data Quality Initiative project	Implementation of the agency's component of the statewide longitudinal data system	$1,005,000	December 2013
Bank of North Dakota	CashPlus project	Upgrade of the Bank's CashPlus system to provide for additional functionality	$459,900	April 2013

Project Closeout Reports				
Agency	**Project Name**	**Project Description**	**Actual Cost**	**Actual Completion Date**
Information Technology Department	Statewide automated victim information and notification 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	Actual expenditures of $910,249, compared to the baseline budget of $1,091,780	Completed in 28.5 months, 4 months longer than the baseline schedule of 24.5 months
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	Actual expenditures of $1.5 million, the same amount as budgeted	Completed in 16 months, 2 months longer than the baseline schedule of 14 months
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	Actual expenditures of $549,813, compared to the budget of $655,784	Completed in 18 months, 4 months longer than the baseline schedule of 14 months
Department of Public Instruction	Teacher licensure application rewrite project	Rewrite of the department and the Education Standards and Practices Board systems from the mainframe to a modern architecture capable of meeting the data reporting demands that are required by federal and state laws	Actual expenditures of $1,205,474, compared to the final baseline budget of $867,000	Completed in 40 months, 14 months longer than the baseline schedule of 26 months
Department of Corrections and Rehabilitation	Inmate trust and commissary software project	Acquisition and implementation of an inmate banking trust and commissary system	Actual expenditures of $370,061, compared to the baseline budget of $568,500	Completed in August 2010, approximately 2 months later than estimated
Department of Transportation	Position information questionnaire (PIQ) rewrite project	Rewrite of the PIQ system from a Lotus Notes application to a web-based platform	Actual expenditures of $285,983, compared to the budget of $301,575	Completed in 14 months, 2 months longer than the final baseline schedule of 12 months
Bank of North Dakota	Student loan lender system project	Replacement of the Bank's student loan lender system	Actual expenditures of $1,885,113, compared to the final baseline budget of $2,202,342	Completed in 18 months, 1 month longer than the baseline schedule of 17 months
State Department of Health	Program reporting system	Implementation of updates to the current program reporting system	Actual expenditures of $293,368, compared to the final baseline budget of $297,100	Completed in 4 months, the same number of months as scheduled
Department of Human Services	Minimum dataset (MDS) project	Modification of the department's MDS legacy system to incorporate the new MDS 3.0 assessment	Actual expenditures of $649,348, compared to the final baseline budget of $857,452	Completed in 16 months, 5 months longer than the baseline schedule of 11 months
Job Service North Dakota	*JobsND.com* rewrite project	Rewrite of the *jobsND.com* website	Actual expenditures of $255,057, compared to the final baseline budget of $290,000	Completed in 8 months, the same number of months as scheduled

Project Closeout Reports				
Job Service North Dakota	Unemployment insurance Internet claim entry application reemployment enhancement 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, expend self-service capabilities, and provide automated task reminders and event notifications	Actual expenditures of $357,576, compared to the baseline budget of $615,025	Completed in 10 months, the same number of months as scheduled
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	Actual expenditures of $7,853,725, compared to the baseline budget of $8,310,000	Completed in 29 months, the same number of months as scheduled
Office of Management and Budget	North Dakota public reporting website project	Implementation of a publicly available searchable budget database website	Actual expenditures of $230,444, compared to the revised baseline budget of $315,911	Completed in 8 months, the same number of months as scheduled
Legislative Assembly	Legislative enterprise system North Dakota (LEGEND)	Replacement of legislative applications	Actual expenditures of $5,474,497, compared to the revised baseline budget of $5,752,497	Completed in 28 months, 4 months longer than the baseline schedule of 24 months
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	Actual expenditures of $589,541, compared to the baseline budget of $700,000	Completed in 18 months, the same number of months as scheduled
State Department of Health	Disease surveillance management system project	Implementation of a flexible and configurable, commercial, off-the-shelf electronic disease surveillance and outbreak management system	Actual expenditures of $550,000, the same amount as budgeted	Completed in 41 months, 28 months longer than the final baseline schedule of 13 months
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	Actual expenditures of $347,796, compared to the final baseline budget of $345,006	Completed in 20 months, 2 months shorter than the final baseline schedule of 22 months
Job Service North Dakota	Interactive voice response system	Replacement of the current obsolete interactive voice response system	Actual expenditures of $1,248,817, compared to the final baseline budget of $1,369,541	Completed in 8 months, approximately two weeks longer than the final baseline schedule of 7.5 months
Secretary of State	Data processing project (old)	Implementation of an off-the-shelf 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	Actual expenditures of $613,010	The project was terminated on June 30, 2011.

Project Closeout Reports				
Department of Human Services	5010 legacy project	Enhancements to the Medicaid management information system and pharmacy point-of-sale system due to federal regulations	Actual expenditures of $950,028, compared to the final baseline budget of $909,410	Completed in 21 months, 8 months longer than the final baseline schedule of 13 months
Bank of North Dakota	North Dakota college access network project	Outreach to Native American students regarding attending and paying for college	Actual expenditures of $298,922, compared to the final baseline budget of $306,500	Completed in 8.25 months, approximately the same number of months as scheduled
Office of Management and Budget	PeopleSoft environment partitioning project	Separation of the PeopleSoft hosting environments for state government and higher education	Actual expenditures of $440,683, compared to the final baseline budget of $500,000	Completed in 9.5 months, the same number of months as scheduled
Office of Management and Budget	PeopleSoft talent management project	Implementation of the PeopleSoft talent management suite to provide state agencies with access to an online system for performance evaluations, succession planning, and career planning	Actual expenditures of $660,735, compared to the final baseline budget of $745,336	Completed in 7.5 months, the same number of months as scheduled

Department of Human Services - MMIS Rewrite Project

The committee learned the Department of Human Services is in the process of implementing a new MMIS. The primary function of the system is the payment of Medicaid claims from health care providers for individuals enrolled in the Medicaid program. The department released a request for proposal for the new MMIS in June 2005 and selected Affiliated Computer Services, Inc. (ACS) as the project vendor. The initial estimated completion for the project was July 2009. The project has experienced several project delays.

The committee learned the Department of Human Services and Xerox State Healthcare--formerly ACS--finalized negotiations in December 2011 for past project delays, resulting in Xerox agreeing to reduce its contract by $3,500,000, of which $404,250 is from the general fund. The negotiations also addressed the inclusion of the Health Information Portability and Accountability Act (HIPAA) 5010 transaction standards into the new MMIS. The compliance date for this federal requirement was January 1, 2012. The cost for this expansion of the project is $6,606,822, of which $763,088 is from the general fund. The department's legislative appropriation for the 2011-13 biennium includes $6.7 million for postproduction support and licensing services from Xerox for the period from June 1, 2012, to June 30, 2013. With the extension of the go-live date for the project, these funds will no longer be needed for the postproduction support and licensing services. The department will use these funds for the cost of the increase in the project's scope.

The committee learned the department's 2011-13 legislative appropriation also includes funding of $1,885,744, of which $217,803 is from the general fund, for user acceptance testing of the new system. The department is also including these funds in the project budget to better represent overall project costs.

The committee learned the department and Xerox finalized negotiations in May 2012 in which Xerox recognized a seven-month schedule delay and agreed to a reduction in the total amount payable of $1,000,000, of which $115,500 is from the general fund. An additional nine-month delay in the schedule is attributable to the inclusion of International Classification of Diseases, Tenth Revision (ICD-10) functionality into the North Dakota Health Enterprise MMIS. The compliance date for this federal requirement is October 1, 2013, which aligns with the new "go-live" date. The ICD-10 functionality was not included in the original scope of the project contract and represents an increase in the project cost by $8,425,282, of which $1,146,553 is from the general fund. The inclusion of the ICD-10 functionality also affects the budget for the other third-party vendors, Information Technology Department costs, and Department of Human Services' contract staff. The following is a summary of the project budget:

	General Fund	Permanent Oil Tax Trust Fund	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 for the project			2,267,871	2,267,871
2011-13 appropriation (estimated amount remaining from the permanent oil tax trust fund)	1,474,362	(1,474,362)		
2011-13 appropriation adjustment relating to the amount remaining from the permanent oil tax trust fund	(68)	68		

2011-13 project scope change - Inclusion of the HIPAA 5010 transaction standards (covered by a $6.7 million 2011-13 legislative appropriation for postproduction support and licensing services)	763,088		5,843,734	6,606,822
2011-13 appropriation - User acceptance testing	217,803		1,667,941	1,885,744
2011-13 project scope change - ICD-10 functionality (Xerox)	1,146,553		7,278,729	8,425,282
2011-13 project scope change - ICD-10 functionality (third-party vendors)	79,147		599,064	678,211
2011-13 project scope change - ICD-10 functionality (Information Technology Department costs)	201,840		1,527,719	1,729,559
2011-13 project scope change - ICD-10 functionality (Department of Human Services' contract staff)	7,439		56,308	63,747
Total project budget	$7,533,297	$2,193,526	$72,191,913	$81,918,736

The committee learned that Xerox is finalizing the development of the North Dakota Health Enterprise MMIS and pharmacy point of sale and is executing system integration testing which includes the execution of 17,301 test scripts. The system integration testing is scheduled to be complete on December 28, 2012. Through October 2012, 94 percent of the test scripts have been executed, and those scripts have generated 3,930 defects. Of those 3,930 defects, 3,232 have been corrected and 685 remain to be corrected. All test scripts must be executed and all high severity defects must be corrected by November 2, 2012. Xerox's ability to meet the November 2012 deadline will indicate whether or not system integration testing may be completed by the end of December 2012.

The committee learned the department is executing user acceptance testing of the provider enrollment functionality. This component of the system will become operational six months prior to the North Dakota Health Enterprise MMIS and pharmacy point-of-sale components in order to give providers adequate time to reenroll in the new system. The "go-live" date for the provider enrollment is scheduled for April 1, 2013.

The following is a project funding summary through August 2012:

Description	Budget	Spent Through August 2012	Remaining
General fund	$7,533,297	$3,466,386	$4,066,911
Federal funds	72,191,913	41,556,709	30,635,204
Other funds	2,193,526	2,193,526	0
Total	$81,918,736	$47,216,621	$34,702,115

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 estimated cost of the project is $17.8 million, which consists of $14 million originally appropriated for the project, $3 million of additional funding appropriated by the Legislative Assembly in 2011 for the project, and $800,000 of internal reallocations. The project has experienced schedule delays due to difficulties completing technical specifications and corresponding custom development.

The committee learned the project vendor--Aon eSolutions--did not meet the production implementation date for the claims system of January 2012. As a result, Aon eSolutions forfeited payments of $115,000 for February 2012, $115,000 for March 2012, and $25,000 for April 2012. Aon eSolutions continues to forfeit $25,000 per month until the claims system is implemented. In addition, Workforce Safety and Insurance negotiated $912,000 in free maintenance and support from Aon eSolutions over a two-year period following the implementation date.

The committee learned Workforce Safety and Insurance received a software release on July 6, 2012, and four software updates in August and September 2012. The software updates have resulted in testing challenges as some features that were previously operational were not after the software updates. Aon eSolutions will deliver another software release in late October or early November 2012. The agency has not made any payments to Aon eSolutions except for travel expenses since January 2012. Third-party costs continue, and the agency is in negotiations with Aon eSolutions to mitigate these costs.

Secretary of State - Data Processing System Projects

The committee learned the Secretary of State's data processing system project consisted of implementation of an off-the-shelf 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 was terminated on June 30, 2011, due to the determination that the project vendor was unable to complete the project. The agency spent $613,010 on the project.

The committee learned the Secretary of State has partnered with the Information Technology Department for a new data processing system project. The project consists of a web-based software system to manage the agency's processes for central indexing, licensing and registrations, and campaign finance. The new system will allow the agency's personnel, public users, and others the ability to view, update, search, and manage information related to business through the Internet. The project is estimated to cost $3,468,428, and is anticipated to be completed in October 2014.

Highway Patrol - Electronic Permits Project

The committee learned the Highway Patrol's electronic permits project consists of the following components:

- The update of the receipt and permit application, including the expansion of the e-permit application.
- The purchase and implementation of a commercial off-the-shelf automated routing module to interface with the e-permit application and other Department of Transportation applications for state and federal roads.

The committee learned the update of the receipt and permit application portion of the project has been separated into three phases. The first phase was deployed on February 1, 2012, and includes online identification supplements, online workover rig permits, and the update and changing of all e-permit application pages. The second phase was deployed on April 4, 2012, and results in all permits being available online. The third phase which is primarily the permit administration functions is scheduled for release in March 2013. The agency has signed a contract with ProMiles for the implementation of an automated routing module to interface with the e-permit application. The module is scheduled to be implemented in June 2013.

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, OMB, 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 2013-15 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 26, 2012, and prioritized major executive branch computer software projects proposed for the 2013-15 biennium as follows:

General Fund Projects				
			Preliminary Project Budget	
	Project	Agency	General Fund	Total Funds
1	Statewide seamless base map - Phase 3	Adjutant General (Department of Emergency Services)	$1,200,000	$1,700,000
2	Computer-aided dispatch upgrade	Adjutant General (Department of Emergency Services)	340,000	340,000
3	Behavioral health information system replacement	Department of Human Services	5,000,000	5,000,000
4	Taxpayer access point (business registration and web file)	Tax Department	1,000,000	1,000,000
5	Electronic case file information system	Information Technology Department	545,360	545,360
6	Mainframe migration analysis	Department of Human Services	148,907	810,000
7	Time and attendance	Department of Human Services	396,237	575,642
	Total		$8,630,504	$9,971,002

Special and Federal Funds Projects			
	Project	Agency	Preliminary Project Budget
1	Identification, arrest, and prosecution improvement	Attorney General	$2,340,050
2	Motor vehicle replacement	Department of Transportation	9,819,250
3	Wyoming, Colorado, Arizona, and North Dakota (WyCAN) unemployment insurance modernization project	Job Service North Dakota	12,157,639
4	Automated vehicle location system	Department of Transportation	394,375
5	Policy information computer replacement	Workforce Safety and Insurance	2,000,000
6	eTransit	Department of Transportation	383,450
	Total		$27,094,764

The Information Technology Department will revise the prioritized listing to reflect those projects that are included in the Governor's 2013-15 biennium budget and will present the revised priority listing to the Appropriations Committees of the Legislative Assembly in 2013.

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 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:

- Support University System infrastructure needs.
- Improve University System information technology-enabled business processes and services while providing and managing resources to align with strategic goals.
- Improve and enhance student learning and customer focus.
- Improve and enhance student collaborative efforts.

The committee learned the State Board of Higher Education has identified the following information technology initiatives:

- Lecture capture and content management - This initiative involves the implementation of online technology to record video, audio, and content. The State Board of Higher Education has approved the Tegrity lecture capture product, and the product has been implemented at all higher education institutions.
- Learning management system - This initiative involves the implementation of a consistent learning management system to enhance curriculum content and provide mobile device interfaces. An action plan is being developed with a final recommendation to be made in November 2012.
- Document imaging scanning - Most higher education institutions use document scanning software for business functions, such as invoice processing, contract management, electronic personnel files, and student records. Most of the current systems are departmental-based and departmental-housed which do not provide operational efficiencies or sound security practices. The State Board of Higher Education has approved an action plan for implementation of a common administrative approach to improve efficiencies.
- Unified communications system - This initiative involves the implementation of a consistent set of communication services, including integrated voice mail, e-mail, instant messaging, and personal computer interactions.
- Human resources electronic workflow - This initiative involves an expansion and enhancement to the human resources electronic workflow, including centralized payroll.
- Integrated approach to delivering information technology services - This initiative involves the implementation of a more integrated approach to information technology planning and service delivery, including minimizing locally developed software and hosting services and moving to broadly accepted and supported applications and services.

Northern Tier Network

The committee received a status report on the Northern Tier Network activities from representatives of the University System. The committee learned the Northern Tier Network is the implementation of an ultra high-speed information technology network from Seattle, Washington, to Chicago, Illinois, and from Winnipeg, Manitoba, to Omaha, Nebraska. The network consists of 10 optical waves capable of transferring about 10 gigabytes of information per second per wave. 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. Segments from Montana to Minneapolis and from Fargo to Grand Forks were completed in 2009. The connection to South Dakota's network was completed in the spring of 2012, and the connection to the Canadian border is in the planning phase. Section 15-10-45 provides that the University System may use the network infrastructure only for the purpose of supporting the research and education missions of the University System.

Joint University System and University of North Dakota Information Technology Building Project

The committee received status reports on the joint University System and University of North Dakota (UND) information technology building project. The committee learned the Legislative Assembly in 2011 appropriated $20.5 million, of which $12.5 million is from the general

fund and $8 million is from special funds, for a joint University System and UND information technology building project. The $8 million of special funds relates to a federal grant for funds to construct a research facility adjacent to the joint facility. The Legislative Assembly also provided that the State Board of Higher Education may spend additional funds on the project of up to $5 million that are made available from UND, North Dakota State University, and University System information technology services funding resulting from one-time savings or efficiencies.

The committee learned a project steering committee was appointed that had representation from higher education institutions, the University System office, and the State Board of Higher Education. The project steering committee decided to separate the data center from the office building and construct the data center in an existing warehouse on the UND campus and construct a new office building on the west edge of the campus. The University System is not anticipating receiving federal funding for an adjacent research facility.

The committee learned the bids for the office building were approximately 10 percent higher than anticipated. The increase related primarily to general contractor costs. Mechanical and electrical bids were close to estimated costs. As a result, the State Board of Higher Education approved an increase in the project budget from $15,726,023 to $16,848,523. The construction on both facilities is expected to be completed in August 2013.

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:

- Classroom transformation grants - Competitive grants totaling $350,000 were awarded to six schools to support adoption of digital content to replace traditional textbooks and the use of 1-to-1 student devices and online or blended teaching and learning methods.
- Interactive video grants - Grants totaling $266,000 were awarded to schools to support the upgrade of 46 interactive video classrooms.
- Century Link grants - Grants totaling $25,000 were awarded to five schools. Grants were limited to schools in the Century Link service areas.
- United States Department of Agriculture Rural Utilities Service grants - Grants totaling $658,236 were awarded to schools across the state to upgrade 48 video classrooms.
- North Dakota kindergarten through grade 12 educational technology plan - The plan has been updated for 2012 through 2015.

The committee learned EduTech provides information technology service and professional development to North Dakota elementary and secondary schools. All elementary and secondary schools are required to use the PowerSchool application as their student information system by July 2013. EduTech staff is in the process of deploying the application to all schools. All schools are anticipated to be using PowerSchool by February 2013. EduTech staff is also assisting schools in the preparation for online state assessments based on common core standards scheduled to be delivered in the fall of 2014.

The committee learned the Center for Distance Education is North Dakota's online distance education high school. The center has modified its mission to ensure that all North Dakota middle and high school students regardless of location have access to educational opportunities. The center's key objectives are to:

- Reduce the cost of courses.
- Increase North Dakota enrollments.
- Increase electives and advanced courses in small schools.
- Establish partnerships.
- Increase the center's performance.

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.

OTHER INFORMATION

Information Technology Department 2013-15 Information Technology Rates and Budget Request

The committee received information from representatives of the Information Technology Department regarding technology rates for the 2013-15 biennium. The committee learned increases in rates are due to the need for additional funding for providing anticipated salary and health insurance increases for department employees. Assuming state agencies purchase the same level of services in the 2013-15 biennium as the most recent 12-month period, the department estimates fee changes for the 2013-15 biennium will generate approximately $1.7 million more revenue to the department in the area of software development and $155,000 of additional revenue in the area of computer hosting. The fee changes for network

and telephone services are estimated to result in a reduction of approximately $700,000 of revenue to the department.

The following is a summary of select rates for the 2013-15 biennium:

Description of Service	2011-13 Budget Rate	2013-15 Budget Rate
Analyst/project manager	$67/hour	$69/hour
Analyst II	$75/hour	$75/hour
Analyst III	$75/hour	$83/hour
Senior analyst/senior project manager	$86/hour	$94/hour
Architect	$89/hour	$99/hour

The committee requested information regarding the Information Technology Department's budget request for the 2013-15 biennium, including information on total funding being requested compared to the 2011-13 legislative appropriation and information on major increases and decreases. The committee learned the department had not submitted its 2013-15 budget request as of October 9, 2012, and therefore, information was not available.

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 2011-13 biennium, ManTech International Corporation performed the assessment and testing consisting of the following three 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 computer network from an external point of view. External assessment procedures focus on performing Internet research, discovering systems connected to the Internet, and probing systems 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 and network to additional risk.
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 comprise 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 assessment and testing findings:

Project Task	Findings
External vulnerability assessment	There were 11 unique vulnerability findings, including 6 high-risk, 4 medium-risk, and 1 low-risk. The findings are classified into two categories--misconfigured systems or applications and operating systems or software applications that were missing critical security patches.
Internal vulnerability assessment	There were 28 unique vulnerability findings, including 22 high-risk, 4 medium-risk, and 2 low-risk. The findings are classified into two categories--misconfigured systems or applications and operating systems or software applications that were missing critical security patches.
Penetration testing	In regard to direct penetration testing, the project team completed five penetration testing scenarios for further explorations based on the findings of the external vulnerability assessment. Upon a detailed review of each system and publically available exploits for the identified vulnerabilities, the project team determined none of the proposed scenarios were viable for execution. In regard to a "phishing" exercise, the project team executed a scenario based on the recent rollout of the ConnectND talent management suite. The project team sent "phishing" e-mails to 545 state employees claiming to be from the administrator of the ConnectND system. The first report by a state employee of the "phishing" e-mail to the Information Technology Department service desk was within 10 minutes of the e-mail. The Information Technology Department simulated a block of the malicious domain within 25 minutes of the e-mail and sent notification to state employees within 50 minutes. The project team collected 63 sets of valid credentials from employees that did not realize the e-mail was a "phishing" exercise.

The committee learned ManTech International Corporation provided the following general recommendations:

- Implement formal patch management program - Multiple systems were found to be missing critical operating system and application security patches. A baseline should be established to document deployed operating systems and application software installed on each system in

the environment. Application software that is not mission critical should be removed. Regular review should be completed to ensure all operating system and application security patches are deployed in a timely manner.

- Internal segregation of critical servers and development systems - Segregate servers deemed to be hosting critical data or services from the internal network by hosting these servers on a separate subnet strictly controlled by access-lists. Development servers should also be completely isolated on a separate subnet with no access to other state resources.
- Require use of encrypted protocols for remote management - Large numbers of systems on the state's internal network were noted using unencrypted protocols for remote access and management of systems. Security best practices recommend the use of encrypted protocols for remote access and management.
- Restrict access to protocols for remote management from the Internet - IP-based access controls should be put in place to restrict access to known and trusted IP addresses that have a legitimate need to connect to remote access services.

Statewide Longitudinal Data System Initiative

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 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 current efforts regarding the initiative:

- The Department of Public Instruction has been awarded approximately $5 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.
- The North Dakota Lead Center is providing statewide longitudinal data system training to elementary and secondary schools. The training is being conducted on behalf of the Department of Public Instruction, is offered at no cost, and is being hosted at regional education association sites. The training includes general information about the system and information on data currently available in the system which includes state assessment results, dropout rates, graduation rates, ACT results, and students enrolled in college developmental courses.
- Job Service North Dakota has been awarded approximately $1 million of federal funds for Workforce Data Quality Initiative, which is the agency's component of the statewide longitudinal data system. The agency has selected a project vendor and is currently in the execution phase of the project.
- The North Dakota University System has implemented a data warehouse for its campus solutions application and has applied for a federal grant to develop automated data extracts to the statewide longitudinal data system.
- As of October 2012, the Statewide Longitudinal Data System Initiative, which is the combination of all the individual projects, is 87 percent under budget and 10 percent behind schedule.

Health Information Technology

The committee received information from the Health Information Technology Office within the Information Technology Department regarding health information technology activities. The committee learned 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, the Chairman of the House Human Services Committee, the Chairman of the Senate Human Services Committee, and individuals appointed by the Governor and the State Health Officer to represent a broad range of public and private health information technology stakeholders. Section 54-59-26 establishes a Health Information Technology Office in the Information Technology Department.

The committee learned the Information Technology Department has received a $5,343,733 grant from the Office of the National Coordinator for Health Information Technology for implementing a statewide health information technology and exchange network. The grant is for four years and will be used for planning activities (10 percent), intrastate implementation (55 percent), and interstate implementation (35 percent). The grant's match requirements are:

Year 1 (October 1, 2009 - September 30, 2010)	$0 of state funds for each federal dollar
Year 2 (October 1, 2010 - September 30, 2011)	$1 of state funds for each $10 of federal dollars
Year 3 (October 1, 2011 - September 30, 2012)	$1 of state funds for each $7 of federal dollars
Year 4 (October 1, 2012 - September 30, 2013)	$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. The plans were submitted to and approved by the Office of the National Coordinator for Health Information Technology. In December 2010, the office issued a request for proposal for the statewide health information technology and exchange network. The office received proposals from six qualified vendors and awarded a contract to Optum Health Information Exchange. The project will be completed in three phases. The anticipated contract cost is $3.7 million plus options. The funding for the statewide health information technology and exchange network will be provided equally among state government, health care payers, and health care providers. The participation fees for health care payers and providers will be established by the Health Information Technology Advisory Committee and are anticipated to begin in fiscal year 2014. The participation fees are estimated to generate from $1 million to $1.5 million per year.

COMMITTEE RECOMMENDATIONS

The committee recommends Senate Bill No. 2033 to change the definition of a large information technology project. The bill amends Sections 54-35-15.2, 54-59-05(8), 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.

The committee recommends Senate Bill No. 2034 to create an executive steering committee for information technology projects. The bill is based in part on provisions included in Executive Order 2011-20 for information technology projects of executive branch state agencies. The bill provides that:

- An executive branch state agency proposing to conduct a major information technology project as described in Section 54-35-15.2(10), the Information Technology Department, and OMB, in consultation with the Attorney General, shall collaborate on the procurement, contract negotiation, and contract administration of the project. The agency, the Information Technology Department, and OMB, in consultation with the Attorney General, shall approve the solicitation, contract, or agreement, and any amendments relating to the project before submission to the executive steering committee.
- The procurement officer and primary project manager for a major information technology project must meet the qualifications established by the Information Technology Department and OMB.
- An executive steering committee must be appointed to oversee each major information technology project. The agency project sponsor is to serve as chairman of the committee. The executive steering committee must consist of the Director of OMB, the Chief Information Officer, the head of the agency contracting for the project, the project sponsor, and a large project oversight analyst designated by the Chief Information Officer. The executive steering committee is to monitor the overall status of the project and review project decisions, including negotiation and execution of contracts, approval of project budgets, implementation of project schedules, assessment of project quality, and consideration of scope changes. Any project decision declared by a member of the committee to be a major project decision requires at least four affirmative votes.
- An agreement or contract, including an amendment, revision, or scope change, for a major information technology project may not be entered unless signed by the head of the contracting agency and the Chief Information Officer.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned five studies:

- Section 1 of Senate Bill No. 2305 (2011) directed a study of the issue of juvenile court jurisdiction and the adult court transfer process and whether any additional juvenile court jurisdictional extensions would serve the best interests of the child and the public in cases in which the child is close to the age of majority.
- Section 1 of House Bill No. 1365 (2011) directed a study of statutes of limitation and venue requirements for civil actions in North Dakota, including a review of the limitation on the length of time that has passed since a cause of action arose and whether the time limitations in current law remain appropriate or should be changed, the extent to which claims are filed in North Dakota courts for claims otherwise prohibited in other states due to the relevant statute of limitation having expired, and a review of the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state.
- Section 1 of Senate Bill No. 2125 (2011) directed a study of the feasibility and desirability of adopting the Uniform Electronic Recording of Custodial Interrogations Act.
- Section 5 of Senate Bill No. 2042 (2011) directed a study of the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming.
- House Concurrent Resolution No. 3011 (2011) directed a study of the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act.

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 North Dakota Century Code Section 54-35-02. The Legislative Management also delegated to the committee the responsibility for statutory and constitutional revision.

By Legislative Management Chairman directive, the committee was delegated the responsibility to review the potential implications on the state of a recent opinion of the United States Department of Justice's opinion on Internet gambling which indicated interstate transmissions of wire communications that do not relate to a sporting event or contest fall outside the reach of the federal Wire Act of 1961; and to review the recent announcement of the United States Department of Justice regarding a revised definition of rape within the Federal Bureau of Investigation's Uniform Crime Reporting program and determine whether state statutory changes are necessary in light of this revised definition.

The Legislative Management delegated to the committee the responsibility to receive the following five reports:

- 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 (§ 19-03.1-44).
- 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 (§ 54-61-03).
- A biennial report from the Racing Commission regarding the operation of the commission (§ 53-06.2-04).
- A report from the director of the North Dakota Lottery regarding the operation of the lottery (§ 53-12.1-03).
- 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 (§ 50-06-31).

Committee members were Senators Dave Nething (Chairman), Jim Dotzenrod, David Hogue, Stanley W. Lyson, Carolyn C. Nelson, Curtis Olafson, Mac Schneider, Margaret Sitte; and Representatives Stacey Dahl, Lois Delmore, Dennis Johnson, Joyce Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Andrew Maragos, Gary Paur, and Steven L. Zaiser.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

EXTENDED JUVENILE COURT JURISDICTION STUDY

North Dakota Juvenile Court System

Background

The North Dakota juvenile court system involves a number of state and local agencies; however, it is largely defined through the role of the juvenile court under Chapter 27-20. This chapter, which is known as the Uniform Juvenile Court Act, establishes the juvenile court as a division of the district court. The district courts serve as the juvenile courts in the state and have exclusive and original jurisdiction over children. As defined by Section 27-20-02, "child" means an individual who is under the age of 18 years and is not married; or under the age of 20 years with respect to a delinquent act committed while under the age of 18 years. This chapter further defines the jurisdiction of the juvenile

court with regard to deprived, delinquent, and unruly children.

The administration of the juvenile court in North Dakota has been divided into four administrative units. There are four juvenile court directors who oversee offices in Grand Forks, Devils Lake, Bottineau, Grafton, Fargo, Jamestown, Valley City, Wahpeton, Bismarck, Dickinson, Minot, and Williston.

Disposition of Delinquent Child Cases

The juvenile court has several options for handling or disposing of delinquent child cases including diversion, which allows for the referral of the juvenile to a private agency or program; an informal adjustment under Section 27-20-10 which allows the child and parents to enter an informal adjustment agreement that sets conditions for the child to be accountable for the charges through informal court probation; and a formal adjudication in which a petition is filed in the district court and the case proceeds through the court system. The decision on the option selected is based on the seriousness of the offense, the age of the juvenile, previous offense history, and reliability of evidence.

Section 27-20-34, which deals with the transfers to other courts, provides after a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense, the court, before hearing the petition on its merits, is required to transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if: (1) the child is over 16 or more years of age and requests the transfer; (2) the child was 14 years of age or more at the time of the alleged conduct and the court determines there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance; or (3) the child was 14 or more years of age at the time of the alleged conduct and the court finds reasonable cause to believe the child committed the act alleged, the child is not amenable to treatment or rehabilitation as a juvenile, and if community safety is a concern.

Juvenile Caseload Data

According to the 2011 annual report of the North Dakota court system, the 2011 data shows a decrease in juvenile offenses. Overall referrals decreased 9 percent after decreasing 5 percent from 2009 to 2010. The report indicated offenses against persons made up 7 percent of the juvenile court caseload, while status offenses--those offenses that only a child can commit--made up 36 percent of the caseload. Property offenses comprised 21 percent; deprivation, 10 percent; traffic offenses, 4 percent; and other delinquency, 36 percent. Based on primary charges, the largest percentage--38 percent--of juvenile charges were disposed of through the informal adjustment process. Only 12 percent of juvenile charges were processed through a formal petition.

Senate Bill No. 2305

Senate Bill No. 2305, as introduced, would have provided a process for the transfer of juvenile cases to adult court for certain offenses and a process for the transfer to extended jurisdiction juvenile court. The testimony on Senate Bill No. 2305 indicates the bill was modeled after a similar law in Minnesota.

The introduced bill would have amended Section 27-20-34 to provide for a specific procedure for the transfer to adult court of a juvenile who is alleged to have committed certain offenses. The bill would have created a new section to Chapter 27-20 relating to a process for a transfer to extended jurisdiction juvenile court. This new section would have provided a child who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel.

Testimony from the North Dakota Association of Counties in opposition to the bill indicated some of the provisions in the bill, which were modeled after Minnesota law, do not mesh with North Dakota law, including the granting of jury trial rights to juveniles. The testimony indicated the bill raised some good issues, but that an indepth study of the issues is needed. Testimony from the State Court Administrator's office indicated the Supreme Court Juvenile Policy Board had a number of concerns with the bill.

In response to the testimony, Senate Bill No. 2305 was amended to call for a study of juvenile court jurisdiction and the adult court transfer process.

Testimony and Committee Considerations

In its study of the juvenile court jurisdiction and the adult court transfer process, the committee received extensive information and testimony from several assistant state's attorneys who are assigned to prosecute juvenile court cases; several members of the North Dakota Juvenile Policy Board; the Director of Juvenile Court Services; a juvenile court officer; the North Dakota Association of Counties; and the North Dakota Association of Criminal Defense Lawyers. The committee's deliberations focused primarily on whether to recommend legislation that would allow for extended juvenile court jurisdiction for certain offenses.

Testimony from an assistant state's attorney indicated the current juvenile transfer process, which provides that certain offenses, such as gross sexual imposition, drug offenses, and murder, are mandatorily transferred to adult court, takes away the ability of the juvenile court to assess what type of treatment or rehabilitation is best for the child. According to the testimony, extended juvenile court jurisdiction would be an extra tool for juvenile courts to assess each case individually. Under extended juvenile court jurisdiction, the child would receive both a juvenile disposition and an adult sentence. The juvenile court would have the ability to attempt to treat the child in juvenile court. If, after a period of time, the juvenile court determines the disposition attempted was not successful, the court

could revoke the disposition and sentence the child as an adult. It was noted that under the current system, the prosecutor must decide if juvenile court or adult court is appropriate before adjudication. After the child has been adjudicated of the offense, the case cannot be transferred to another court.

Testimony from representatives of the North Dakota Juvenile Policy Board indicated the board had a number of concerns with the extended juvenile court jurisdiction proposal and questioned how often such a law would be used.

The committee also received information from a juvenile court officer regarding his experience with a similar extended juvenile jurisdiction process in Minnesota. According to the testimony, while the extended jurisdiction juvenile process provides another option for those isolated cases in which the juvenile committed a serious offense but may not be appropriate for an automatic transfer to the adult system, the extended jurisdiction juvenile process in Minnesota was implemented inconsistently across jurisdictions based on personal opinions, philosophies, and interpreting the statute differently. It was noted the extended juvenile jurisdiction is used sparingly in Minnesota. According to the testimony, when designating a juvenile extended jurisdiction, the juvenile may have some short-term effectiveness, but it did not appear to reduce recidivism in the long run. Of the 15 extended jurisdiction juvenile offenders from the 10 years the juvenile court officer worked in Minnesota, 8 of them have committed new misdemeanor or felony-level offenses that resulted in supervised probation with the Minnesota Department of Corrections and some term of jail or imprisonment.

During the course of the committee's study of extended juvenile court jurisdiction, the committee considered a bill draft that would allow for extended jurisdiction in certain juvenile proceedings. Testimony in explanation of the bill draft indicated the bill draft was the product of a committee composed of judicial referees, defense attorneys, assistant state's attorneys, a criminal justice graduate student, and various agencies and associations. The bill draft was modeled after a similar law in Montana. The bill draft added a new section to Chapter 27-20 to allow for the option of extended juvenile jurisdiction proceedings. This new section would provide for the imposition of two dispositions; one juvenile disposition and one stayed adult sentence. The new section also provides a procedure for revoking the child's juvenile disposition and imposing the stayed adult sentence. Under the bill draft, the only offense with an automatic transfer would be murder.

Testimony from several assistant state's attorneys in support of the bill draft indicated under current law there are only two options--file a motion to transfer the case to adult court or keep the case in juvenile court. It was noted not all cases fit neatly into one of those two categories. It also was noted although these cases do not arise on a frequent basis, there is a need for a workable mechanism for dealing with them; the extended jurisdiction juvenile proceeding would provide that middle ground. According to the testimony, a juvenile prosecutor's decision of whether a child should be charged as a juvenile or as an adult for an offense committed as a child is a difficult one. A juvenile prosecutor also has to consider public safety and whether a juvenile court disposition would be enough to treat fully the child's needs. Extended juvenile jurisdiction would give juvenile prosecutors the ability to wait and see--to first give the child the opportunity to be treated as a juvenile and then impose the adult sentence if what can be provided in juvenile court is not enough.

Testimony in opposition to the bill draft from representatives of the Juvenile Policy Board indicated the board, in consultation with all of the juvenile court directors, voted not to support this legislation. Referrals to juvenile court are down in the state because of the positive impact the state juvenile justice system's philosophy of balanced and restorative justice has had on improving outcomes for children and recidivism. The testimony indicated this philosophy keeps children in the community and relies on evidence-based approaches like in-home family therapy and cognitive restructuring. The testimony cited several studies that have expressed skepticism about the effectiveness of extended juvenile jurisdiction laws, which are also known as blended sentencing laws.

There have been changes in the area of dealing with juvenile crime since many of the blended sentencing laws were passed in the 1990s. It was noted the way the juvenile court system deals with juveniles has changed, which statistically has been very successful. According to the testimony, the studies indicate that possibility of being transferred to adult court does not mean anything to juveniles nor does it affect their behavior. It was noted the extended juvenile court jurisdiction is a prosecutor's tool.

Testimony in opposition to the bill draft from the Director of Juvenile Court Services noted that nationally juvenile crime continues to decline, and juvenile violent crime is at its lowest point in two decades. North Dakota's juvenile referrals have declined at a similar pace, and the state has seen a 20 percent decrease in delinquent referrals since 2007. In 2011 North Dakota had 405 felony offenses--11 percent of the total--and only 11 cases were transferred involuntarily to adult court. The testimony noted threats, no matter how serious, do not change adolescent behavior. Juveniles who have made some terrible choices are not capable of changing their thoughts and actions just because they are threatened with serious future consequences, such as adult jail time. It was noted research in the last decade clearly has shown the very last part of a child's brain to develop is the frontal lobe. The frontal lobe involves the ability to recognize future consequences and make behavior choices accordingly. Without a fully developed frontal lobe, teenagers are like a fully loaded car without brakes; the result being that delinquent behavior is normative for that age. According to the testimony, the brain is not fully developed until around age 21 for females and up to age 23 for males. According to the testimony, the state's juvenile court officers agree with this current adolescent brain research as well as what they know about the harmfulness of early transfers to adult court. It was noted six large-scale national studies have shown that juveniles transferred to adult court are actually more likely to

reoffend. Finally, it was noted the juvenile court would support legislation that moves delinquent acts other than murder and attempted murder away from the mandatory transfer and allow the court to decide on cases that transfer after a full needs and risks assessment is completed.

The committee also received testimony in opposition to the bill draft from the North Dakota Association of Criminal Defense Lawyers. The testimony expressed concern about young teens that may fall under this bill draft who may not actually be violent or habitual offenders. Concerns also were expressed that the interests of the parents were not adequately addressed in the bill draft, and this change may cause more harm to that juvenile that really needs rehabilitation but instead is saddled with a lifelong felony conviction.

Testimony from the North Dakota Association of Counties indicated while a significant number of the state's attorneys support the extended juvenile jurisdiction concept, several have questioned some of the technical issues and a few have questioned the need for the bill draft altogether. It was noted because of the disagreement among the members of the State's Attorneys Association, the association neither supports nor opposes the bill draft. According to the testimony, of the four larger counties in the state, the state's attorneys from Burleigh, Grand Forks, and Cass counties likely would support the concept while the state's attorney from Ward County likely would not support the concept.

To address several issues raised by the testimony, the committee amended the bill draft to clarify that a motion for designation as an extended jurisdiction juvenile proceeding may be made by any party, including the child's parent or guardian. In response to a concern about a judicial referee handling extended jurisdiction juvenile cases, the committee amended the bill draft to provide that the assignment of a judicial officer to conduct an extended jurisdiction juvenile proceeding must be decided in accordance with rules adopted by the Supreme Court.

Recommendation

The committee recommends Senate Bill No. 2035 to provide the option of an extended juvenile jurisdiction proceeding for certain offenses. The bill provides that upon the motion of any party, including a child's parent or guardian, the court may consider the proceeding an extended jurisdiction juvenile proceeding. The bill also provides the assignment of a judicial officer to conduct an extended jurisdiction juvenile proceeding must be decided in accordance with rules adopted by the Supreme Court.

STATUTE OF LIMITATIONS AND VENUE STUDY

Statutes of Limitation

Statute of limitations is the term commonly applied to a statute that prescribes the periods beyond which a plaintiff may not bring a civil action. Statutes of limitations are intended to give potential plaintiffs a reasonable time to present their claims and to protect potential defendants and the courts from having to deal with cases that are impaired by the loss of evidence such as by the death or disappearance of witnesses, the disappearance of documents, or fading memories. The primary purposes of statutes of limitations are to compel a plaintiff to exercise the right to bring an action within a reasonable time so the opposing party has a fair opportunity to defend; to prevent undue delays in bringing a suit on a claim; to protect defendants from the burden of litigating stale claims; to encourage promptness and diligence in bringing actions; and to promote judicial efficiency.

Although statutes of limitation for civil and criminal actions are contained throughout the Century Code, statutes of limitation with respect to most tort and contract actions are primarily found in Chapter 28-01. The statutes of limitation in this chapter include:

- **Actions having 20-year limitations** - Action against abstractor for an error or omission in an abstract (§ 28-01-45).
- **Actions having 10-year limitations** - Judgments of any court of the United States; contracts affecting title to real property; any action for the foreclosure of a mortgage upon real estate (§ 28-01-15); actions for relief not otherwise provided for by law (§ 28-01-22).
- **Actions having six-year limitations** - Contracts not affecting real property or subject to the Uniform Commercial Code; collection of debt on account; collection of rents; trespass; injury to personal property; injury to the person or rights of another not arising upon contract, when not otherwise expressly provided; fraud (§ 28-01-16).
- **Actions having three-year limitations** - Actions against a sheriff or coroner based upon an act or omission of an official duty; action upon a statute for a penalty or forfeiture; foreclosure of a construction lien (§ 28-01-17); actions against the state or its employees acting within the scope of their employment (§ 28-01-22.1); action against a real estate broker for a breach of duty relating to a real estate transaction (§ 28-01-48).
- **Actions having two-year limitations** - Libel, slander, assault, battery, false imprisonment; action upon a statute for a forfeiture or penalty to the state; professional malpractice (up to six years for medical malpractice); wrongful death; recovery of damages arising under Chapter 5-01 (§ 28-01-18); actions founded on right of homestead (§ 28-01-21).
- **Actions having one-year limitations** - Actions against a sheriff or other officer for the escape of a prisoner (§ 28-01-10).

Section 28-01-25 provides for an extension on the limitations of actions for those individuals who, at the time the claim for relief accrues, are under the age of 18 years, who are mentally ill, or who are imprisoned for a term less than for life. This section provides the time of the disability is not a part of the time limited for the commencement of the action.

Venue Requirements in Civil Actions

In order to hear and decide a case, a court must have jurisdiction over the parties involved (personal jurisdiction); jurisdiction over the subject matter involved (subject matter jurisdiction); and proper venue.

Venue, as commonly understood, is the place where the power of the court to adjudicate is to be exercised--the place where a case may be or should be heard. The primary function of a venue requirement is to provide a convenient, logical, and orderly forum for litigation.

Chapter 28-04 addresses the appropriate venue for civil actions in the state's courts. Under Section 28-04-01, an action relating to real property must be brought in the county in which the subject matter of the action is situated.

Section 28-04-02 provides for the recovery of personal property that is being held in order to compel payment and for recovery on an insurance policy for loss or damage to the property insured, the action must be tried in the county in which the subject of the action or some part of the subject is situated.

For the recovery of a penalty or forfeiture imposed by statute or a cause of action against a public officer, Section 28-04-03 provides the case must be tried in the county where the cause or some part of the cause arose.

Section 28-04-03.1 provides an action against the owner or driver of any motor vehicle arising out of negligent driving, operation, management, or control of the motor vehicle must be brought either in the county where the action arose, in the county of the residence of the defendant, or in the county of the residence of the majority of the defendants.

Section 28-04-04 provides an action against a domestic corporation or limited liability company must be brought in the county designated in the plaintiff's complaint if the corporation or company transacts business in that county.

Section 28-04-05 addresses those actions having venue where the defendant resides. This section provides in all other cases, except motor vehicle cases, the action must be brought in the county in which the defendant or one of the defendants resides at the time of the commencement of the action. This section provides if no defendant resides in the state, the action must be brought in the county that the plaintiff designates in the summons.

Section 28-04-07 authorizes the court to change venue if the county designated in the complaint is not the proper county; if there is reason to believe an impartial trial cannot be had in that county; if the convenience of witnesses and the ends of justice would be promoted by the change; or if taking into account the court's calendar and the number of jury cases for trial, moving the venue would allow for a prompt trial of those cases.

Testimony and Committee Considerations

In its study of the statutes of limitation and venue requirements for civil actions in North Dakota, the committee received testimony from the North Dakota Chamber of Commerce, the North Dakota Association for Justice, the North Dakota Criminal Defense Lawyers Association, the Property Casualty Insurers Association of America, and several private attorneys. The committee's deliberations centered on two issues--whether the statute of limitations for certain civil actions should be decreased from six years to three years and whether the venue statute relating to actions having venue where the defendant resides should be amended.

Statute of Limitations

As introduced, House Bill No. 1365 would have decreased the statute of limitations in Section 28-01-16 from six years to three years. As passed, the bill provided for this study. Section 28-01-16 provides for a six-year statute of limitations for the following actions: contracts; liability created by statute; trespass upon real property; taking, detaining, or injuring any goods or chattels; criminal conversation or for any other injury to the person or rights of another; and relief on the ground of fraud. The committee received considerable testimony in support of and in opposition to the proposal of reducing the statute of limitations for these civil actions from six years to three years.

During the course of the committee's deliberations on the topic of this statute of limitations, the committee considered a bill draft similar to House Bill No. 1365. The bill draft would have reduced, from six years to three years, the statute of limitations for the civil actions provided for in Section 28-01-16. The bill draft provided the statute of limitations would apply to causes of action accruing after July 31, 2013. The committee amended the bill draft to remove a reference in Section 28-01-16(2) to "an action other than a penalty or forfeiture," an action that already has a three-year statute of limitations.

Testimony in support of the bill draft indicated the number of states with six-year general torts and personal injury statute of limitation periods has been shrinking. In 1992, there were seven states with six-year statutes of limitations. As of 2012, only North Dakota, Minnesota, and Maine have a six-year statute of limitations for personal injury claims. The testimony indicated the remaining states have either a two-year or three-year statute of limitations for personal injury cases. South Dakota and Montana are among the states with a two-year statute of limitations. The testimony indicated there are three primary reasons why the limitation period should be reduced:

- A shorter limitation period would prevent stale claims. Over time, evidence disappears, witnesses die, or their memories fade. The loss of evidence impairs a defendant's ability to defend and the truth-finding function of the court. The overall effect of shortening the limitation period would be to cause plaintiffs to file their claims earlier.
- A three-year limitation period would bring North Dakota into the mainstream. In light of modern-day modes of research, communication, transportation, and finding and serving defendants, North Dakota's law, which dates back to territorial days, is in need of updating.

- A three-year limitation period would help prevent forum shopping. When a plaintiff is time-barred from pursuing an action in another state because the statute of limitations had run, the claims are brought to North Dakota to take advantage of the longer limitations period.

Testimony in opposition to the bill draft indicated reducing the number of years within which an injury claim must be made would have the effect of restricting the rights of individuals who have been injured in accidents but do not start a lawsuit within three years of the date of the accident. The testimony also indicated this change likely would have the unintended consequence of increasing the number of lawsuits in the state. Other testimony in opposition to the bill indicated the state's litigation environment is continually rated as one of the best in the nation by the business community because the state is considered nonlitigious in comparison to other states. It was noted one of the primary reasons for this rating is that disputes are resolved outside of the litigation process through settlement negotiations. The testimony emphasized the six-year limitation allows time for the settlement process to work. A shorter limitations period would result in more litigation because there would not be enough time to resolve claims after the person heals.

Venue

In its review of the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state, the committee reviewed the venue statutes contained in Chapter 28-04. The committee focused on the requirements of Section 28-04-05, which contains the venue requirements in situations in which none of the defendants reside in the state. Current law provides that in this instance, the "action must be brought in the county which the plaintiff shall designate in the summons." The committee received testimony that amending this section would prevent forum shopping by both resident and nonresident plaintiffs when none of the defendants reside in the state.

During the course of the committee's review of the venue statutes, the committee considered a bill draft to amend Section 28-04-05 to provide that "[i]f none of the defendants reside in the state the action either must be brought in the county in which the plaintiff resides or in the county in which the cause of action arose."

Testimony in opposition to the bill draft indicated this change to the venue statute would violate the Privileges and Immunities Clause of the United States Constitution (U.S. Const. Art. IV, Sec. 2) by precluding a nonresident from suing a nonresident in North Dakota in situations in which a state resident could do so. According to the testimony, even if the bill draft did not violate the Privileges and Immunities Clause, many would conclude that it operates unfairly when the accident happens in the state, the defendant is a resident of another state, and the plaintiff is also a resident of another state--either never having lived here or having moved away since the accident. It was argued the best way to eliminate forum shopping by out-of-state plaintiffs is to have a statute of limitations period that is similar to what most other states have. It was also noted a change to the venue statutes would not address two fundamental matters that a short statute of limitations would address--to prevent stale claims and to bring North Dakota into the mainstream.

The committee amended the bill draft to provide that "[i]f none of the defendants reside in the state, the action either must be brought in the county in which the plaintiff or one of the plaintiffs resides or in the county in which the cause of actions arose.

Testimony in support of the amended bill draft indicated Section 28-04-05, as amended, would apply equally to both resident and nonresident. The support indicated this bill draft would prevent forum shopping by resident plaintiffs and nonresident plaintiffs. According to the testimony, only in those cases in which there is no connection to the state would a plaintiff be precluded from using the state's courts. The testimony also contended that if the case does not have a connection to North Dakota, taxpayers of the state should not be required to bear the cost to the judicial system. It was noted the state's judicial system is overworked and understaffed, and the courts should not be burdened by litigation from nonresident plaintiffs against nonresident defendants for causes of action which did not arise in the state. The amendment to Section 28-04-05 would accomplish that objective without violating the Privileges and Immunities Clause of the United States Constitution.

Recommendation

The committee recommends House Bill No. 1042 relating to venue in civil cases which would provide that if none of the defendants reside in the state, the action either must be brought in the county in which the plaintiff or one of the plaintiffs resides or in the county in which the cause of action arose.

UNIFORM ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS ACT

Section 1 of Senate Bill No. 2125 directed a study of the feasibility and desirability of adopting the Uniform Electronic Recording of Custodial Interrogations Act. As introduced, the bill would have provided for the adoption of the uniform Act.

In 2010 the National Conference of Commissioners on Uniform State Laws (National Conference) approved and recommended the uniform Act for enactment in all states. This uniform Act addresses issues that accompany interrogations conducted by law enforcement officials. The uniform Act, which requires law enforcement to electronically record custodial interrogations, is intended to promote truth finding and judicial efficiency and to further protect the rights of law enforcement and those under investigation. The uniform Act, which has been endorsed by the American Bar Association, has been adopted in Indiana.

Testimony and Committee Considerations

The committee received testimony from the National Conference of Commissioners on Uniform State Laws,

the Attorney General, the North Dakota Association of Counties, the State's Attorneys Association, the North Dakota Association of Criminal Defense Lawyers, the North Dakota Peace Officers Association, several chiefs of police, and a county sheriff.

The committee received information from the Attorney General regarding the projected costs of implementing the uniform Act. According to information, the estimated cost of implementing the uniform Act on a statewide basis would be about $7.5 million plus maintenance and updating costs. The cost estimate was based on the assumption that no law enforcement agency has any of the required equipment. It was noted in addition to the cost of equipment, law enforcement agencies may not have sufficient physical space to meet the requirements of the uniform Act.

Testimony in support of adopting the Act cited three reasons why the Act should be adopted. First, the Act promotes fundamental fairness in our criminal justice system and would make our criminal justice system better. A representative of the North Dakota Criminal Defense Lawyers Association indicated the recording of interviews takes away any uncertainty about what was said. The Act allows for the capture of an accurate and truthful account of the interview which may be helpful for courts to consider at a later time if necessary. By doing this, the testimony noted, the constitutional rights of the accused and the rights of law enforcement are protected. Second, the Act is not unfair to law enforcement if a recording does not occur for some reason. The Act does not punish officers for equipment failures or if officers believed the Act did not apply at the time. Violations of the Act do not automatically result in excluded evidence but merely become a factor for the court to consider. Third, the Act promotes cost-savings to the state. When an interview is recorded, prosecutors and defense attorneys can accurately access the facts of the case and give their clients the best advice based on accurate information. In turn, the testimony noted, the number of pretrial motions and trials before the court will be reduced and amount to a cost-savings.

Testimony in opposition to the adoption of the Act from a representative of the State's Attorneys Association indicated the Act raises the issue of whether there is trust and respect for law enforcement in the state. It was noted that Act indicates the recording must be done at the police station; however, a custodial interrogation often takes place in the field. It was noted there are also concerns about the costs of audio and video equipment, the quality of the recordings, the consequences of having equipment fail, and the verification of whether a duplicate copy of a recording is an exact duplicate. It was contended the Act is neither practical nor necessary for law enforcement or prosecutors.

Testimony from the North Dakota Association of Counties indicated the adoption of the Act would affect a large number of the association's members, especially state's attorneys and sheriffs. According to the testimony a survey conducted by the association reflected a general disfavor of some of the specifics of the Act.

Testimony from the North Dakota Peace Officers Association indicated the general consensus from law enforcement was opposition to the Act. According to the testimony, the Act would have a detrimental impact on law enforcement, as well as the court system; it would be more beneficial to allow the individual agencies and departments the ability to implement policies and procedures to address the issue; and it was widely perceived the Act would eliminate the discretion of law enforcement officers and law enforcement agencies.

Other testimony in opposition to the Act from chiefs of police and sheriffs cited the following concerns: the lack of space to add an interrogations room; the failure of recording equipment in the field; concerns about the storage of recordings, including the need for additional servers; the need for clarification in the Act on what constitutes juvenile delinquent acts.

Conclusion

The committee makes no recommendation regarding the adoption of the Uniform Electronic Recording of Custodial Interrogations Act.

CHARITABLE GAMING ORGANIZATION STUDY

Section 5 of Senate Bill No. 2042 directed a study of the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming.

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 Article XI, Section 25, of the Constitution of North Dakota which 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.

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 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 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.

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.

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 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 2011-13 budget for the Gaming Division of the Attorney General's office includes a full-time equivalent (FTE) staff of 15 people. The total funding to the Gaming Division is $2,813,487 for the 2011-13 biennium. This amount includes $510,000 in local gaming enforcement grants. The total funding to the Gaming Division includes $261,128 for tribal casino inspections and $7,368 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).

In 2011 the Legislative Assembly adopted Senate Bill No. 2042, a bill that consolidated the allowable expense limit from a graduated rate to a flat rate of 60 percent for all licensed gaming organizations. The bill also consolidated all gaming taxes, including excise taxes, into single tax rates. The bill provided gaming tax rates, which range from 1 to 2.5 percent, are based upon an organization's quarterly gross proceeds. The current tax structure, which is contained in Section 53-06.1-12, provides as follows:

- Organizations with wagers not exceeding $500,000 are taxed at 1 percent of gross proceeds;
- Organizations with wagers exceeding $500,000 but not exceeding $1 million are taxed at 1.5 percent of gross proceeds;
- Organizations with wagers exceeding $1 million, but not exceeding $1.5 million are taxed at 2 percent of gross proceeds; and
- Organizations with wagers exceeding $2 million are taxed at 2.5 percent of gross proceeds.

The Attorney General is required to deposit 3 percent of the total taxes collected under this section into a gaming 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.

Testimony and Committee Considerations

The committee received testimony and information from the Gaming Division of the Attorney General's office and charitable organizations. The committee's deliberations centered on two issues--the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming; and charitable gaming activity and taxes.

Charitable Gaming Organizations

The committee received testimony that among the various classifications of charitable gaming organizations, the greatest concern relates to public-

spirited organizations and the broad use of that term. Concerns were expressed that many organizations do not fit the definition of public-spirited, and the definition is too broad as to what qualifies as public-spirited. Also included in those concerns were reports of complaints that certain establishments are attracted to certain public-spirited organizations and, consequently, are able to crowd out other organizations. It was noted businesses have free choice to select the gaming organizations they want in their establishments.

Organizations are required to file a form with the Attorney General's office as to how the charitable funds are spent. Organizations are limited to 60 percent of adjusted gross proceeds for expenses. The remainder of the proceeds is required to be used for the organization's charitable purposes.

In response to these concerns, the committee received testimony from the Gaming Division and the licensing administrator of the Attorney General's office. According to the testimony, the Attorney General verifies that an organization meets the statutory requirements for an organization. It was reported there are 285 licensed gaming organizations, which includes: 17 licensed charitable organizations; 29 civic and service organizations; 5 educational organizations; 25 fraternal organizations; 44 public safety organizations; 113 public-spirited organizations; 2 religious organizations; and 50 veterans' organizations. Each organization, with the exception of an educational organization, must be registered with the Secretary of State's office as a nonprofit organization to be eligible for a state gaming license. Only fraternal and veterans' organizations are required also to be recognized by the Internal Revenue Service as an organization exempt from federal income tax under sections 501(c) 8, 10 or 19 of the Internal Revenue Code. The Gaming Commission's administrative rules define the types of organizations that are ineligible to receive a state gaming license. A county, city, state, political subdivision, or federal entity is not eligible for a gaming license. In addition, nonprofit social, hobby, trade, business, professional or similar clubs or associations, or those organizations whose primary purpose mainly provides a direct benefit to its officers is not considered a public-spirited organization eligible for a gaming license.

Since 2005 it was reported, there have been a total of 10 gaming license applications received in the Attorney General's office from organizations that, at the time of application, did not meet the requirements to receive a state gaming license. Four of those organizations were considered nonprofit social, hobby, trade, business, or professional clubs or associations; three organizations had not been fulfilling their primary purpose for the two years immediately preceding their application; one organization was not domiciled in North Dakota; one organization's primary purpose included the conduct of games; and one organization's primary purpose mainly provided a direct benefit to its officers. The testimony indicated the Attorney General's office has never had to revoke a license due to the failure to continue to meet the definition of a public-spirited organization.

In addition to the information regarding the eligibility requirements for charitable gaming organizations, the committee received testimony from several public-spirited organizations regarding each organization's charitable purpose. A public broadcasting organization testified the organizations work with schools, state agencies, colleges and universities, private foundations, businesses, and other entities to provide programming and services that have regional and statewide relevance. It was noted education is at the core of the organization's mission, and the organization has made a positive impact on the lives of thousands of children as well as adults. Testimony from an athletic booster club and a young golf organization both emphasized each organization's positive impact in their respective communities and on the lives of many youth.

Gaming Activity and Taxes

The committee received testimony that charitable gaming is a very healthy industry in the state. The quarter ending March 31, 2012, set a record for gross wagers of $79,869,420, which was the highest quarter in charitable gaming's 35-year history. Gross wagers for the fiscal year ending June 30, 2012, were $293,741,341--the second highest fiscal year ever.

The committee received testimony from the Gaming Division regarding the impact of Senate Bill No. 2042, a bill which eliminated the 3 percent excise tax on bingo and pull tabs and replaced the four-tiered progressive gaming tax on adjusted gross proceeds with a four-tiered incremental tax on gross proceeds. The new gaming tax rates range from 1 to 2.5 percent. The bill became effective on July 1, 2011. The Gaming Division reported gaming tax collections for the 2011-13 biennium are estimated at $11.6 million, a $5 million decrease from the previous biennium when $16.6 million was collected. It was also reported the combination of the new tax rate system and basing taxes on gross proceeds rather than adjusted gross proceeds has resulted in a more simplified form for reporting.

During the quarter ending June 30, 2012, 13 organizations paid at the 2.5 percent rate; 8 organizations paid at the 2 percent rate; 10 organizations paid at the 1.5 percent rate, and 251 organizations paid at the 1 percent rate. Three organizations paid a higher effective tax rate under the new tax structure but all three organizations had higher gross wagers than in the same quarter of the previous year. Most of the organizations in the 2.5 percent bracket received a tax cut.

Testimony from charitable gaming organizations expressed support for changing the gaming tax structure from an incremental tax on gross proceeds to a progressive tax on gross proceeds.

Conclusion

The committee makes no recommendation regarding the charitable gaming organization study.

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

House Concurrent Resolution No. 3011 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 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 North Dakota Society of Certified Public Accountants, 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. 3011, indicated as of January 2011, there were 14,503 limited liability companies registered with the Secretary of State, including 9,205 general limited liability companies, 134 professional limited liability companies, 175 farm limited liability companies, and 4,949 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.

Testimony and Committee Considerations

The committee received testimony and information from the Secretary of State and a member of the State Bar Association of North Dakota regarding the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act.

Testimony from the Secretary of State regarding the adoption of the Act indicated the study was important because of the complexity of the Act and to ensure the Act is modified to include the provisions applicable to North Dakota practices and procedures.

Following a review of the Act, the committee received testimony that it was the recommendation of Secretary of State and the member of the State Bar Association to not move ahead with the introduction of this Act during the 2013 session. The testimony cited two reasons for the recommendation. First, only eight jurisdictions--California, Idaho, Iowa, Nebraska, New Jersey, Utah, and Wyoming, and the District of Columbia--have enacted the Act since the revision was recommended in 2006. It was noted considerable amendments to the version recommended by the National Conference were made to the Act in these jurisdictions. The Act was introduced in Minnesota; however, no action was taken on the Act during that state's 2012 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 reported between June 30, 2011 and September 30, 2012, the number of domestic limited liability companies that registered with the Secretary of State's office increased from 9,732 to 13,899--a 43 percent increase in 15 months. During that same period, the number of foreign limited liability companies registered as being authorized to do business in the North Dakota increased from 5,288 to 7,436--an increase of 40 percent. According to the testimony, based on the increased number of registrations, the current law appears to be doing quite well. It was recommended the state's best course of action may be to retain current law and postpone any action on the Act until it is more widely accepted in other states, especially in Minnesota. It was emphasized this legislation is too important to be enacted without careful consideration.

Conclusion

The committee makes no recommendation regarding the Revised Uniform Limited Liability Company Act.

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:

- **Uniform Electronic Legal Material Act**. This Act, which was approved by the national conference in 2011, addresses the authentication and preservation of electronic legal material.

- **Model Protection of Charitable Assets Act**. This model Act, which was approved by the national conference in 2011, is intended to confirm the role of the state Attorney General in protecting charitable assets. As drafted and presented to the committee, the model Act included revisions suggested by the Attorney General's office.
- **Amendment to Uniform Commercial Code Article 4A (4A-108)**. The amendments, approved by the national conference in 2012, revise Section 4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the federal Electronic Funds Transfer Act. The amendment then restates the rule of the Supremacy Clause that the federal statute will control in the case of any conflict between Article 4A and the Electronic Funds Transfer Act.
- **Uniform Certificate of Title for Vessels Act**. The major objectives of this Act, which was approved by the national conference in 2011, are to: (1) create uniform state titling laws that the United States Coast Guard will approve; (2) facilitate transfers of ownership of a vessel; (3) deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel; (4) accommodate existing financing arrangements for vessels; and (5) provide certain consumer protections when purchasing a vessel through the Act's branding initiative.
- **Uniform Collaborative Law Act.** This Act, which was approved by the national conference in 2009 and amended in 2010, regulates the use of collaborative law, a form of alternative dispute resolution.
- **Uniform Premarital and Marital Agreements Act.** This Act, which was approved by the national conference in 2012, establishes procedural and substantive safeguards for marital agreements and unifies those safeguards with those for premarital agreements.
- **Uniform Deployed Parents Custody and Visitation Act.** The objective of this Act, which was approved by the national conference in 2012, is to facilitate expeditious and fair disposition of cases involving the custody rights of a member of the military.
- **Uniform Asset Freezing Order Act**. This Act, which was approved by the national conference in 2012, provides authority for the granting of in personam orders that prevent a defendant in an action pending in one jurisdiction from dissipating assets that the defendant holds in another jurisdiction and that are necessary to ensure that assets are available to ensure payment of a judgment granted in the other jurisdiction.

The committee makes no recommendation regarding these uniform Acts.

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. 2501043 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change:

11-28.3-09	This change relates to the levy limit for ambulance service districts, which was increased to 10 mills by 2001 Session Laws Chapter 511.
28-32-10(2)	This change is necessary due to a 2005 amendment that creates duplicate language for sending notices and rules to legislative sponsors.
29-15-21(1)	This change is necessary as this subsection was partially superseded by adoption of an amendment to N.D.R.Ct. 3.1 effective May 1, 2012, to provide that a party need only file the original demand for change of judge, which superseded the portion of the statute requiring filing in triplicate of a demand for change of judge.
54-03-01.11	This section, which describes legislative districts resulting from the 2001 legislative redistricting, should have been repealed in 2011 House Bill No. 1473, the bill which describes the current legislative districts in Section 54-03-01.12.
57-64-02(5)	This change is necessary to clarify that the provisions for assessment of railroad property are in Chapter 57-05.
64-02-09	This change corrects an ambiguity between a United States survey foot and an international foot.
65-02-35(1)	This change is necessary due to a name change from the Office of Independent Review to the Decision Review Office.

LEGISLATIVE MANAGEMENT DIRECTIVES

By Legislative Management directive, the committee was delegated the responsibility to review the potential implications on the state of a recent opinion of the United States Department of Justice's opinion on Internet gambling which indicated interstate transmissions of wire communications that do not relate to a sporting event or contest fall outside the reach of the federal Wire Act of 1961 and to review the recent announcement of the United States Department of Justice regarding a revised definition of rape within the Federal Bureau of Investigation's Uniform Crime Reporting program and determine whether state statutory changes are necessary in light of this revised definition.

Internet Gambling Opinion

On September 20, 2011, the United States Department of Justice issued an opinion in response to requests by New York and Illinois to clarify whether the federal Wire Act of 1961, which prohibits wagering over telecommunications systems that cross state or national borders, prevented those states from using the Internet to sell lottery tickets to adults within their own borders. According to the opinion, interstate transmissions of wire communications which do not relate to a "sporting event

or contest" fall outside the reach of the federal Wire Act. The opinion also concluded that because the proposed New York and Illinois lottery proposals did not involve wagering on sporting events or contests, the Wire Act does not prohibit the New York and Illinois proposals to sell lottery tickets via the Internet.

The Attorney General provided information and testimony to the committee regarding the potential implications of the opinion. According to the testimony, the opinion has been interpreted to provide that wire communications can be used for other types of gaming if allowed by the state's law. The testimony also indicated the ruling provides that as long as the purchase is made by an in-state resident who is buying from that state's lottery, the fact the Internet service provider is in another state does not violate the federal Wire Act. It was noted the opinion, which overturns four previous administrations' opinions on the issue, is not a court opinion and could be reversed with a new United States Attorney General or presidential administration. The testimony suggested it will be up to the Legislative Assembly to decide as to whether the state wants to allow the online purchase of lottery tickets. It was noted that in light of the good relationship the state has developed with approximately 400 lottery retailers who sell and promote the lottery, the Legislative Assembly may wish to proceed cautiously when considering whether to change state law to allow the online purchase of lottery tickets. It was also noted the decision to have both online and retail purchase of lottery tickets may cause some retailers to get out of the lottery business.

The committee makes no recommendation regarding the Department of Justice opinion.

Revised Federal Definition of Rape

In January 2012, the United States Department of Justice announced revisions to the Uniform Crime Report's definition of rape. According to the announcement, the new definition "is more inclusive, better reflects state criminal codes and focuses on the various forms of sexual penetration understood to be rape." The announcement provided the Federal Bureau of Investigation's Criminal Justice Information Services Advisory Policy Board recommended the adoption of a revised definition of rape within the summary reporting system of the Uniform Crime Reporting Program. The announcement also provided the change will give law enforcement the ability to report more complete rape offense data as the new definition reflects the vast majority of state rape statutes.

The committee received information from the Attorney General regarding the implications of this revised definition on state statutes. According to the testimony, the announcement of the Department of Justice will have little effect on North Dakota. The state's use of the National Incident-Based Reporting System already accounts for any reporting change that is necessary to comply with the Department of Justice announcement. The testimony indicated no legislative changes are needed. The testimony indicated all definition changes necessary in the state's system will be made.

The committee makes no recommendation regarding the revised federal definition of rape announcement.

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. The report evaluated five sets of statistics:

1. The youth risk behavior survey, which is conducted by the Department of Public Instruction every other year, examines the health risks taken by the state's children;
2. Data on the number and type of drug samples analyzed at the Crime Laboratory;
3. Trends in substance abuse treatment as reported by the Department of Human Services;
4. Arrest statistics compiled by the Bureau of Criminal Investigation from reports submitted by local law enforcement agencies; and
5. Information from the Department of Corrections and Rehabilitation on the number of people incarcerated or on probation for drug related crimes.

The youth risk behavior survey indicated tobacco use among youth is decreasing. The use of alcohol by North Dakota teens has decreased for almost all responses, including drinking and driving and binge drinking. For other illicit drugs, marijuana use decreased by nearly one-third. Sixteen percent of high school students reported having taken a prescription drug without a doctor's prescription.

The Attorney General's report pointed out the State Crime Laboratory experienced an increase in synthetic cannabinoids/bath salts in 2010. It was noted it was necessary to develop a new method of analysis to detect these compounds, which caused an increase in analysis time per sample. The number of samples categorized as "other dangerous drugs", which includes the synthetic drugs, increased from 387 samples in 2006 to 2,628 in 2011. Alcohol continues to be the number one abused substance among adults. Reports of using methamphetamine as a primary substance have decreased in the calendar years 2007-2011 for both adults and adolescents. Reported use of oxycodone as a primary substance, however, has increased for both adults and adolescents.

The Attorney General's Bureau of Criminal Investigation reported drug arrests have increased by 257 percent in the past 21 years from 745 in 1990 to 2,662, in 2011. Meth labs have been reduced by 97 percent since 2003, the year the Legislative Assembly first passed laws restricting sales of over-the-counter medicine used in the manufacture of meth.

The Attorney General's report expressed concern that synthetic drug abuse is becoming epidemic in the state. The report noted there is a mistaken belief with the synthetic drugs that if it is not illegal, it must not be harmful. The report also indicated law enforcement is seeing organized crime and increased gang activity in the state. The report noted some of organized crime

activity is in the oil patch area but not all of it. The report emphasized the state must put a stop to the organized crime and gang activities while these activities are still in their early development or it will be a problem for a long time and the expenditures and resources necessary to address the problems will be enormous. The report also noted resources are stretched in law enforcement in the state and there are concerns about law enforcement burnout.

As a follow-up to the initial report, the Attorney General provided additional information on the expanding law enforcement needs of the state. The information also expounded on the seriousness of the synthetic drug problem in the state.

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. The commission provides legal services to persons who are indigent and who are charged with misdemeanors and felonies in state district court. The commission also provides counsel to indigent persons who are parties in some juvenile cases and other miscellaneous matters.

According to the report, for the year beginning October 2010 through September 2011, the commission provided counsel on approximately 9,000 case assignments. Approximately 84 percent of cases are criminal matters and approximately 17 percent of the case assignments are juvenile matters. The commission also provides legal counsel for about 50 appeals to the North Dakota Supreme Court each year and for about 60 post conviction petitions per year.

The staff of the commission includes 30 full-time employees and several part-time employees who serve as administrative aides. Six public defender offices are located in Williston, Dickinson, Minot, Bismarck, Grand Forks, and Fargo. The Dickinson and Williston offices each have two attorneys and one and one-half administrative staff. The other four offices each have three attorneys, one legal assistant, and one full-time and one part-time administrative staff person. The commission's administrative office is located in Valley City.

The commission's budget for the 2011-13 biennium is $11,779,282. This amount includes $9,808,430 from the general fund. The commission also has the authority to spend monies from a special fund in the amount of $1,970,852. These special funds are received from court fees paid by defendants and from the indigent application fee. The commission does not apply for grants nor does the commission receive any federal funds.

The report indicated the increase in population, the influx of money, and the changing demographics in the western part of the state have had a dramatic impact on the commission and its offices in Minot, Dickinson, and Williston. Because of the volume of cases and the types of cases the commission is seeing in those areas, the commission has not been able to keep up with the demand. As a result of this demand, the commission has resorted to adding pay onto salaries to try to compensate its 11 full-time employees in those areas. Due to the shortage of lodging in these areas, the commission has rented an apartment in Williston to allow their visiting attorneys to stay overnight. The commission is faced with two problems in the western part of the state--a rising caseload and the inability to find attorneys. The commission is experiencing both a shortage of public defender attorneys and private attorneys who are willing to take the conflict cases. According to the report, the commission would like to open an adjunct office to help handle conflict cases from Dickinson and Williston and points in between. The report noted cases in western North Dakota are not just increasing in number--they are spiking. The commission is seeing types of cases that usually are not seen in smaller jurisdictions.

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'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.

According to the report, a positive change in the Racing Commission's financial status, which was attributed to an increase in account deposit wagering activity, brought about the restoration of horse racing at the North Dakota Horse Park, Fargo, in July 2012. The commission provided funding for the Fargo race meet in the amount of $89,000 in purse funds and $18,000 in promotion funds. In addition, the report indicated two account deposit wagering companies donated $54,000 to assist with the operational costs of the race meet.

With regard to account deposit wagering activity, the report indicated in 2009, there was $56 million wagered; in 2010 the account deposit wagering was $69 million; and in 2011 that amount was $112 million. According to the report, the growth can be attributed to the fact that North Dakota-licensed companies are growing in reputation and attracting more clients nationally and internationally. The report indicated that commission continues to see positive growth as the wagering companies mature and refine their business practices.

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.

To accomplish this, the report indicated the lottery must offer attractive games that add value to its product mix, license retailers that are in convenient locations, create effective annual marketing plans, provide quality customer service to retailers and players, and control operating expenses.

For the 2011-13 biennium, the lottery's operating revenue was $2,246,000 for operating expenses and $1,454,000 for salaries and benefits for 9.5 FTE positions for a total of $3.7 million. The lottery has a continuing appropriation for variable expenses of prizes, retailer commissions, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The appropriation funds 8 FTE positions in the Lottery Division of the Attorney General's office, 1 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 conducts five multi-state games: Powerball, Hot Lotto, Wild Card 2, 2by2, and Mega Millions. The Powerball game was launched on March 25, 2004; Hot Lotto on June 24, 2004; Wild Card 2 on September 23, 2004; 2by2 on February 2, 2006; and Mega Millions on January 31, 2010.

For the 2009-2011 biennium, the lottery projected sales of $46,453,880 and net proceeds of $12.4 million. Sales and net proceeds for the biennium compared to projections of $47,425,326 and $12,356,504, respectively. For the 2011-2013 biennium, the Lottery projected sales of $46.5 million and net proceeds of $12,245,000.

During the 2011-13 biennium, the lottery has done or has plans to generate net proceeds of $12,245,000; replace the $1 Powerball game with a $2 Powerball game that will include new features which add strong value propositions to make it more exciting and attractive to players; relaunch the game of Wild Card 2; develop and conduct innovative marketing promotions and public awareness campaigns; implement a retailer sales enhancement pilot program to introduce new point-of-sale items that actively promote the sale of lottery tickets; upgrade terminal software to allow retailers to print subscription applications forms with discounted prices during special promotions; redesign the lottery's website to make it more innovative, user-friendly, and helpful; expand social media contact through Facebook, Twitter, and text messaging; complete request for proposal process for a marketing vendor and issue contract; enhance security features to ensure the integrity and fairness of its operation; and strategically reposition its brand to bring about change and refresh its look.

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. The State Hospital has 60 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. In addition, there are three patients in the correctional system and four patients who are currently being evaluated to determine the need for commitment and treatment. One patient is in the transitional housing program, which is the last stage of treatment before discharge from the program.

The State Hospital operates 76 beds for the purpose of the evaluation and treatment of sexual offenders. Since the program's inception, the State Hospital's evaluators have completed 137 sexual offender evaluations. Of that number, 84 sexual offenders have been committed to the care and custody of the executive director of the Department of Human Services for treatment. The State Hospital has discharged 19 sexual offenders who have successfully completed the requirements of the program. Of those 19 patients, two have returned to prison for crimes not of a sexual nature. In addition, one offender who was discharged on a postcommunity commitment returned to the State Hospital for further inpatient treatment. The annual cost per patient in the program is $89,253. The program has 86 FTE positions that carry out the unique role of treatment provider and security personnel. The James River Correctional Center provides security consultation, training, and services for the State Hospital.

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 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 Representatives Dan Ruby (Chairman), Dick Anderson, Tracy Boe, Patrick R. Hatlestad, RaeAnn G. Kelsch, Keith Kempenich, Gary Kreidt, Joe Kroeber, Andrew Maragos, Corey Mock, David Monson, Chet Pollert, Bob Skarphol, Lonny B. Winrich, and Dwight Wrangham and Senators Randel Christmann, Joan Heckaman, Jerry Klein, Judy Lee, and Terry M. Wanzek.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

During the 2011-12 interim, the State Auditor's office and independent accounting firms presented 7 performance audit and evaluation reports and 112 financial or information technology application audit reports. An additional 58 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 2011-12 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 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 committee.)
6. Receive the performance audit report of Job Service North Dakota upon the request of the committee (Section 52-02-18).
7. Determine necessary performance audits. (Section 54-10-01(4) provides the State Auditor is to perform or provide for performance audits of state agencies as determined necessary by the State Auditor or the 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).

GUIDELINES FOR AUDITS OF STATE AGENCIES

The committee received information on and reviewed guidelines 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 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, 2011 and 2010. The firm presented its audit report at the committee's March 27, 2012, 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 (CAFR). 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, 2010, and June 30, 2011, 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, 2011. An unqualified opinion was issued on the financial statements. As of June 30, 2011, the University System had total assets of $1,322 million and total liabilities of $420 million, resulting in total net assets of $902 million. The total net assets increased $75.3 million during fiscal year 2011.

The annual degree credit headcount enrollment for the fall 2010 semester was 48,120, a 5 percent increase over the fall 2009 enrollment. The revenues from student tuition and fees were $261,960,000 for the fiscal year ended June 30, 2011, which is an increase of 3 percent compared to the revenues from this source for the fiscal year ended June 30, 2010. For the 2010-11 academic year, the four-year campuses raised tuition rates an average of 4 percent. The two-year campuses did not raise tuition rates.

PERFORMANCE AUDITS AND EVALUATIONS

Dickinson State University

The committee received the State Auditor's office performance audit report for Dickinson State University conducted pursuant to authority provided in Chapter 54-10. The audit period for which information was reviewed was July 1, 2008, through June 30, 2011.

Dickinson State University was established in 1918 as the Dickinson State Normal School. The school held its first graduation in 1920, with 18 students completing their degrees. Its original primary purpose was to prepare teachers for rural schools in southwestern North Dakota. Dickinson State University now offers many bachelor’s degrees, including teacher education, business, computer science, agriculture, nursing, and liberal arts, as well as many associate degrees. Dickinson State University is 1 of 11 colleges and universities which comprise University System. The institution is comprised of two colleges--the College of Arts and Sciences and the College of Education, Business, and Applied Sciences.

The performance audit included 33 recommendations. Major recommendations include Dickinson State University:

1. Make appropriate changes to ensure tuition rates are consistently charged and accurately reflect what will be collected.
2. Make appropriate changes to fees charged to students. The university should:
   a. Ensure fees are only charged to students who are expected to utilize the services supported by the fees; and
   b. Ensure fees charged to dual-credit students are fully disclosed.
3. Establish policies and procedures to ensure institutional scholarships are budgeted, awarded, and monitored appropriately.

4. Notify the National Association of Intercollegiate Athletics of apparent violations of requirements. The university should report:
   a. Awarding 75 percent cultural tuition waivers, 100 percent cultural/global tuition waivers, and Blue Hawk presidential out-of-state tuition scholarships only to athletes; and
   b. Awarding Roughrider scholarships and Blue Hawk presidential out-of-state tuition scholarships to athletes without involvement from a committee on student loans and scholarships.
5. Establish a formalized monitoring process to review compliance with academic standards and to validate the academic integrity of the university.
6. Ensure adequate funds exist prior to incurring expenditures.
7. Enroll individuals as students only when required documentation is completed and submitted to the Office of Enrollment.
8. Make changes to the admission process for international students. The university should:
   a. Establish a standard scoring system to measure the language proficiency of applicants;
   b. Require all applicants to take tests which are appropriately administered; and
   c. Ensure all appropriate documentation is received prior to admitting an applicant.

The committee learned Dickinson State University is subject to the following accreditation periods:

- The nursing program is accredited for an eight-year period. The bachelor's, or registered nurse, program is accredited through 2013, and the associate, or licensed practical nurse, program is accredited through 2015.
- The State Board of Nursing has approved the nursing program for the next five years.
- The teacher education program is accredited for a seven-year period and is currently accredited through 2017.
- The school of music is accredited for a five-year period and is currently accredited through 2015.
- The environmental health program is accredited for a six-year period and is currently accredited through 2016.
- The business department is accredited for an eight-year period and is currently accredited through 2018.
- The overall accreditation provided by the Higher Learning Commission is for a 10-year period, and the university is currently accredited through the 2014-15 academic year.

The committee accepted the performance audit report of Dickinson State University.

Use of State-Supplied Vaccines by a Provider

A representative of the State Auditor's office presented the performance audit report of use of state-supplied vaccines by a provider. A provider may include a private physician's office, a public health agency, etc. 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 January 1, 2010, through August 11, 2011.

The Vaccines for Children program is a federal entitlement program for administration of vaccines to eligible children. An eligible child is a child who is age 18 or younger and meets one or more of the following criteria:

- Is an American Indian or Alaska Native.
- Is eligible/enrolled in Medicaid.
- Has no health insurance.
- Is underinsured.

Funding for the vaccine program is through the Centers for Medicare and Medicaid Services to the Centers for Disease Control and Prevention. The State Department of Health is the grantee for the program, and free vaccines are available to providers.

The performance audit recommended the State Department of Health:

1. Meet with the Attorney General's office to discuss concerns noted with the review of information regarding the terminated provider and determine the next appropriate steps to be taken.
2. Periodically review vaccination data related to providers receiving state-supplied vaccines. At a minimum, the department should:
   a. Establish parameters, data outliers, or other criteria to identify potential problem areas; and
   b. Establish policies and procedures regarding the use of such information and action to be taken by the department.
3. Make changes to onsite reviews of providers receiving state-supplied vaccines to ensure program requirements are met and the department is properly informed of results.
4. Conduct a formal cost-benefit analysis of the use of separate entities to perform onsite reviews of providers receiving state-supplied vaccines. Based on results of this cost-benefit analysis, the department should either:
   a. Take appropriate action to obtain necessary resources to perform the onsite visits with state personnel; or
   b. Establish a monitoring process of contractors to ensure onsite reviews are performed as required.
5. Make improvements related to the borrowing of state-supplied vaccines to ensure it occurs only in rare, unplanned situations. If additional training, additional requirements to the enrollment process, or monitoring is unable to improve compliance with borrowing requirements, the department should mandate no borrowing of state-supplied vaccine without prior written authorization.

The committee learned the State Department of Health has updated the Vaccines for Children program

manual which provides guidance to department staff and local public health unit contract staff.

The committee learned the Attorney General's office will attempt to obtain reimbursement for the cost of all unaccounted for state-supplied vaccines administered by a provider to nonqualifying patients.

The committee accepted the performance audit report of use of state-supplied vaccines by a provider.

State Department of Health Family Health Division

Representatives of CliftonLarsonAllen LLP, Certified Public Accountants, presented the performance audit report for the State Department of Health Family Health Division. The state of North Dakota, acting through the State Auditor's office, contracted with CliftonLarsonAllen to perform a control environment performance audit related to the Family Health Division to address potential fiscal irregularities. The audit period for which information was reviewed was January 2010 through April 2012.

The performance audit includes three high-risk observations. The observations provide the State Department of Health:

1. Include a "whistleblower" protection policy in its personnel policy manual;
2. Identify applicable developmental training for program managers and division directors; and
3. Implement a procedure for tracking and monitoring transfers of expenditures relating to federal grants.

The performance audit included seven moderate-risk observations. These observations provide the State Department of Health:

1. Evaluate management's oversight and leadership skills regularly and perform regular surveys of employees in the Family Health Division.
2. Evaluate management's approach to handling personnel issues.
3. Evaluate how the Community Health Section leadership rotation model affects consistency in day-to-day operations, long-term strategic plans, and independence in the chain of command.
4. Implement a process to regularly assess employee morale.
5. Include detail when documenting compensatory time.
6. Approve annual leave before the employee takes annual leave.
7. Consider using a credit card for taxicab fares in certain circumstances.

The performance audit included one low-risk observation:

- The State Department of Health should require employees to submit original receipts in order to receive expense reimbursement.

The committee learned the State Department of Health rewrote its personnel policy manual in February 2012 to include a "whistleblower" protection policy and other rules related to reporting fraud and abuse.

The committee accepted the performance audit of the State Department of Health Family Health Division.

Fees Charged at North Dakota State University and the University of North Dakota

A representative of the State Auditor's office presented the performance audit report of fees charged at North Dakota State University (NDSU) and the University of North Dakota (UND). 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, 2007, through December 31, 2010.

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 is selected by the Council of College Faculties.

In addition to tuition charges, institutions of higher education charge certain fees. For purposes of the performance audit report, the fees were categorized into the following categories--mandatory fees, program fees, course fees, and other fees. Requirements related to the establishment and uses of fees are included within State Board of Higher Education policies. Institutions' authority to receive and expend fee revenue is included as part of a continuing appropriation granted by the Legislative Assembly pursuant to Section 15-10-12.

The performance audit included 24 recommendations. Major recommendations include the State Board of Higher Education:

1. Ensure an effective process for fee establishment, monitoring, and use of fee money collected from students exists to enhance consistency and the accountability of fees.
2. Establish monitoring guidelines at NDSU and UND related to fund balances of fee money and take appropriate action when significant fund balance amounts are identified.
3. Ensure revenues and the use of fee money are adequately tracked at NDSU and UND using PeopleSoft ConnectND.
4. Ensure program fees exist for specific and intended purposes according to policy and identify requirements for changes in the use of previously approved program fees.
5. Require approval outside of the colleges and universities for establishment of a course fee, identify approval requirements for changes in use of previously approved course fees, and develop criteria or an improved definition of a course fee.

The committee learned the University System will be reviewing the fee system for the entire University System over a three-month period, and a proposal will be submitted to the State Board of Higher Education regarding the fee structure.

The committee learned a student fees task force was created by the State Board of Higher Education in

December 2011 and consisted of three voting members of the State Board of Higher Education.

The committee later learned the task force identified specific issues that may require further attention, including transparency, consistency, and affordability. The task force received a request in April 2012 from the incoming Chancellor to delay any further action on student fees until the Chancellor completes a comprehensive review and develops a strategy.

The committee accepted the performance audit of fees collected at NDSU and UND.

Wildlife Services Performance Audit Followup

The committee accepted the followup report presented to the committee on relating to the Wildlife Services program of the Department of Agriculture. The original performance audit was presented to the committee in July 2008. The followup report indicated six of the original recommendations have been fully implemented, four of the original recommendations have been partially implemented, and one recommendation relating to monitoring field specialists' time was determined not to be implemented.

The committee learned the Department of Agriculture is proposing more performance-based measures to be included in the Wildlife Services agreement, which is renegotiated every two years.

The committee later learned provisions were added to the Wildlife Services agreement for the 2011-13 biennium relating to a priority ranking system for service requests, billing for reimbursable service expenses, maximum reimbursements per quarter, quarterly reporting, audit provisions, and customer surveys.

UND School of Medicine and Health Sciences Performance Audit Followup

The committee accepted the followup report on the UND School of Medicine and Health Sciences. The original performance audit was presented to the committee in November 2007. The followup report indicated 28 of the original recommendations have been fully implemented, 6 of the original recommendations have been partially implemented, and 1 recommendation relating to financial review of all the School of Medicine's programs was determined not to be implemented.

The committee learned funding for the School of Medicine is approximately 25 percent from the general fund, 25 percent from grants and contracts, 20 percent from tuition, 5 percent from the statewide mill levy, and 25 percent from local funds consisting of clinical practice income, transfers from hospitals, and sales.

The committee learned the new Bismarck Family Practice Center is expected to be completed in February 2012.

Department of Commerce Performance Audit Followup

The committee accepted the followup report presented to the committee on the Department of Commerce. The original performance audit was presented to the committee in September 2009. The followup report indicated 38 of the original recommendations have been fully implemented, 10 of the original recommendations have been partially implemented, and 2 recommendations relating to monitoring the community development block grant and monitoring or expenditures by the Agricultural Products Utilization Commission were determined not to be implemented.

Future Performance Audits

In addition to the performance audits required by law, the committee requested by motion the State Auditor's office to conduct:

- A performance audit of the University System office, including a review of the functions of the office, evaluation of staffing levels, and the effectiveness of the office to provide support to campuses and address and resolve University System issues.
- A performance audit of the use of tuition waivers and student stipends at University System institutions.
- A performance audit of the State Water Commission's regulation of industrial water use in the state. The State Auditor's office may hire a certified public accountant firm to conduct the audit pursuant to Section 54-10-01 at a cost not to exceed $100,000 to be paid by the State Water Commission. The performance audit is to be completed by January 15, 2013.

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 three tasks--external vulnerability assessment, internal vulnerability assessment, and penetration testing.

The external vulnerability assessment identified 11 unique vulnerability findings, including 6 high-risk, 4 medium-risk, and 1 low-risk. The findings are classified into two categories--misconfigured systems or applications and operating systems or software applications that were missing critical security patches.

The internal vulnerability assessment identified 28 unique vulnerability findings, including 22 high-risk, 4 medium-risk, and 2 low-risk. The findings are classified into two categories--misconfigured systems or applications and operating systems or software applications that were missing critical security patches.

During the penetration test, the project team completed five penetration testing scenarios for further explorations based on the findings of the external vulnerability assessment. Upon a detailed review of each system and publically available exploits for the identified vulnerabilities, the project team determined none of the proposed scenarios were viable for execution. During a "phishing" exercise, the project team executed a scenario based on the recent rollout of the ConnectND talent management suite. The project team sent "phishing" e-mails to 545 state employees claiming to be from the administrator of the ConnectND system. The first report by a state employee of the "phishing" e-mail to the

Information Technology Department service desk was within 10 minutes of the e-mail. The Information Technology Department simulated a block of the malicious domain within 25 minutes of the e-mail and sent notification to state employees within 50 minutes. The project team collected 63 sets of valid credentials from employees that did not realize the e-mail was a "phishing" exercise.

The network and security audit resulted in the following general recommendations:

- Implement a formal patch management program - Multiple systems were found to be missing critical operating system and application security patches. A baseline should be established to document deployed operating systems and application software installed on each system in the environment. Application software that is not mission critical should be removed. Regular review should be completed to ensure all operating system and application security patches are deployed in a timely manner.
- Internal segregation of critical servers and development systems - Segregate servers deemed to be hosting critical data or services from the internal network by hosting these servers on a separate subnet strictly controlled by access-lists. Development servers should also be completely isolated on a separate network with no access to other state resources.
- Require use of encrypted protocols for remote management - Large numbers of systems on the state's internal network were noted using unencrypted protocols for remote access and management of systems. Security best practices recommend the use of encrypted protocols for remote access and management.
- Restrict access to protocols for remote management from the Internet - IP-based access controls should be put in place to restrict access to known and trusted IP addresses that have a legitimate need to connect to remote access services.

The committee learned the findings from the network and security audit are typical of organizations with an enterprise the size of North Dakota. The committee also learned the results of the audit show an improvement over the assessment conducted in 2009.

The committee accepted the North Dakota network and security audit report.

OTHER REPORTS

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 committee regarding accounts receivable writeoffs at the State Hospital, Developmental Center at Westwood Park, and human service centers as of June 30 of each fiscal year. The department's report for fiscal year 2011 was received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2011, were $8,145,986 at the State Hospital, $133,964 at the Developmental Center at Westwood Park, and $894,469 at the human service centers.

The department's report for fiscal year 2012 was also received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2012, were $5,612,659 at the State Hospital, $38,776 at the Developmental Center at Westwood Park, and $856,799 at the human service centers.

OTHER INFORMATION

The committee received other information and reports, including information and reports relating to:

- The Department of Financial Institution's examination of the Bank of North Dakota pursuant to Section 6-09-29.
- Discounting of oil produced on North Dakota state lands.
- Computer "shadow" systems being used at University System institutions.
- Whistleblower laws and rules.

AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2011-13 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Abstracters' Board of Examiners	August 31, 2010, 2009, 2008	June 21, 2012
Addiction Counseling Examiners, Board of	June 30, 2011 and 2010	October 17, 2012
Adjutant General	June 30, 2010 and 2009	August 17, 2011
Administrative Hearings, Office of	June 30, 2011 and 2010	October 17, 2012
Aeronautics Commission	June 30, 2011 and 2010	October 17, 2012
Ag PACE fund	June 30, 2010 and 2009	August 17, 2011
Ag PACE fund	June 30, 2011 and 2010	June 21, 2012
Ag PACE fund	June 30, 2012 and 2011	October 17, 2012
Agriculture, Department of	June 30, 2011 and 2010	June 21, 2012
Architecture, Board of	June 30, 2011 and 2010	October 17, 2012
Attorney General	June 30, 2010 and 2009	August 17, 2011
Audiology and Speech-Language Pathology, Board of Examiners on	June 30, 2010 and 2009	August 17, 2011
Bank of North Dakota	December 31, 2010 and 2009	August 17, 2011
Bank of North Dakota	December 31, 2011 and 2010	June 21, 2012
Beef Commission	June 30, 2010 and 2009	August 17, 2011
Beef Commission	June 30, 2011 and 2010	March 27, 2012
Beginning farmer revolving loan fund	December 31, 2010 and 2009	August 17, 2011
Beginning farmer revolving loan fund	December 31, 2011 and 2010	June 21, 2012
Bismarck State College	June 30, 2011 and 2010	March 27, 2012
Building Authority	June 30, 2010 and 2009	August 17, 2011
Building Authority	June 30, 2011 and 2010	June 21, 2012
Building Authority	June 30, 2012 and 2011	October 17, 2012
Career and Technical Education, Department of	June 30, 2011 and 2010	June 21, 2012
Chiropractic Examiners, Board of	December 31, 2011	June 21, 2012
Chiropractic Examiners, Board of	December 31, 2010	March 27, 2012
Clinical Laboratory Practice, Board of	June 30, 2011 and 2010	October 17, 2012
College SAVE (Bank of North Dakota)	December 31, 2011 and 2010	June 21, 2012
College SAVE (Bank of North Dakota)	December 31, 2010 and 2009	August 17, 2011
Commerce, Department of	June 30, 2011 and 2010	October 17, 2012
Commerce, Department of performance audit followup	December 22, 2010	August 17, 2011
Commission on Legal Counsel for Indigents	June 30, 2011 and 2010	October 17, 2012
Community water facility loan fund	December 31, 2010 and 2009	August 17, 2011
Community water facility loan fund	December 31, 2011 and 2010	June 21, 2012
ConnectND - Human Resource Management Services	June 30, 2011	March 27, 2012
ConnectND - Campus solutions	September 18, 2012	October 17, 2012
Corrections and Rehabilitation, Department of	June 30, 2011 and 2010	October 17, 2012
Cosmetology, Board of	June 30, 2010	August 17, 2011
Cosmetology, Board of	June 30, 2011	March 27, 2012
Council on the Arts	June 30, 2011 and 2010	October 17, 2012
Counselor Examiners, Board of	June 30, 2010 and 2009	August 17, 2011
Dairy Promotion Commission	June 30, 2010 and 2009	August 17, 2011
Dakota College at Bottineau	June 30, 2011 and 2010	March 27, 2012
Dental Examiners, Board of	June 30, 2011 and 2010	March 27, 2012
Development Fund, Inc.	June 30, 2010 and 2009	August 17, 2011
Development Fund, Inc.	June 30, 2011 and 2010	June 21, 2012
Developmentally disabled facility loan program	August 1, 2011	June 21, 2012
Developmentally disabled facility loan program	December 31, 2010 and 2009	August 17, 2011
Dickinson State University	June 30, 2011 and 2010	March 27, 2012
Dickinson State University performance audit	February 28, 2012	March 27, 2012
Dry Bean Council	June 30, 2010 and 2009	August 17, 2011
Dry Pea and Lentil Council	June 30, 2010 and 2009	August 17, 2011
Education Standards and Practices Board	June 30, 2009	August 17, 2011
Education Standards and Practices Board	June 30, 2010	October 17, 2012
Electrical Board	June 30, 2011 and 2010	March 27, 2012
Fees charged at NDSU and UND performance audit	June 5, 2012	July 26, 2012
Financial Institutions, Department of	June 30, 2010 and 2009	August 17, 2011
Firefighters Association, North Dakota	December 31, 2010 and 2009	March 27, 2012
Funeral Service, Board of	June 30, 2010 and 2009	August 17, 2011
Game and Fish Department	June 30, 2010 and 2009	August 17, 2011
Governor's office	June 30, 2011 and 2010	June 21, 2012
Guaranteed student loan program	September 30, 2011 and 2010	June 21, 2012
Guaranteed student loan program	September 30, 2010 and 2009	August 17, 2011
Health, State Department of, Family Health Division performance audit	June 6, 2012	June 21, 2012
Health, State Department of	June 30, 2011 and 2010	October 17, 2012
Hearing Instrument Dispensers, Board of Examiners for	June 30, 2007 and 2006	August 17, 2011
Hearing Instrument Dispensers, Board of Examiners for	June 30, 2010, 2009, and 2008	August 17, 2011
Highway Patrol	June 30, 2010 and 2009	March 27, 2012
Historical Society	June 30, 2010 and 2009	March 27, 2012
Housing Finance Agency	June 30, 2010 and 2009	August 17, 2011
Housing Finance Agency	June 30, 2011 and 2010	June 21, 2012
Human Services, Department of	June 30, 2011 and 2010	June 21, 2012
Indian Affairs Commission	June 30, 2010 and 2009	August 17, 2011
Industrial Commission	June 30, 2011 and 2010	March 27, 2012

Information Technology Department	June 30, 2010 and 2009	August 17, 2011
Information Technology Department (general controls audit)	June 30, 2010	August 17, 2011
Insurance Commissioner	June 30, 2011 and 2010	October 17, 2012
Job Service North Dakota	June 30, 2010 and 2009	August 17, 2011
Job Service North Dakota	June 30, 2011 and 2010	June 21, 2012
Judicial branch	June 30, 2011 and 2010	June 21, 2012
Labor Department	June 30, 2011 and 2010	October 17, 2012
Lake Region State College	June 30, 2011 and 2010	June 21, 2012
Law Examiners, Board of	June 30, 2011 and 2010	June 21, 2012
Legislative Assembly	June 30, 2011 and 2010	March 27, 2012
Legislative Council	June 30, 2011 and 2010	March 27, 2012
Lottery, North Dakota	June 30, 2010 and 2009	August 17, 2011
Lottery, North Dakota	June 30, 2011 and 2010	March 27, 2012
Management and Budget, Office of	June 30, 2011 and 2010	June 21, 2012
Mandan remediation and supplemental environmental projects trusts	December 31, 2010 and 2009	June 21, 2012
Marriage and Family Therapy Licensure Board	December 31, 2011	October 17, 2012
Massage, Board of	June 30, 2009 and 2008	August 17, 2011
Massage, Board of	June 30, 2011 and 2010	March 27, 2012
Mayville State University	June 30, 2011 and 2010	June 21, 2012
Medical Examiners, Board of	December 31, 2010 and 2009	March 27, 2012
Medical Examiners, Board of	June 30, 2009 and 2008	August 17, 2011
Milk Marketing Board	June 30, 2010 and 2009	August 17, 2011
Mill and Elevator Association	June 30, 2011 and 2010	June 21, 2012
Mill and Elevator Association	June 30, 2010 and 2009	August 17, 2011
Minot State University	June 30, 2011 and 2010	March 27, 2012
North Dakota State University	June 30, 2011 and 2010	June 21, 2012
North Dakota University System	June 30, 2010	August 17, 2011
North Dakota University System	June 30, 2011	March 27, 2012
Nursing Home Administrators, Board of Examiners for	June 30, 2010 and 2009	August 17, 2011
Nursing, Board of	June 30, 2011	March 27, 2012
Occupational Therapy Practice, Board of	June 30, 2011 and 2010	October 17, 2012
Oilseed Council	June 30, 2010 and 2009	August 17, 2011
PACE fund	June 30, 2010 and 2009	August 17, 2011
PACE fund	June 30, 2011 and 2010	June 21, 2012
PACE fund	June 30, 2012 and 2011	October 17, 2012
Parks and Recreation Department	June 30, 2011 and 2010	October 17, 2012
Peace Officer Standards and Training Board	December 31, 2010 and 2009	March 27, 2012
Pharmacy, Board of	June 30, 2010 and 2009	August 17, 2011
Pharmacy, Board of	June 30, 2011 and 2010	June 21, 2012
Physical Therapy, Board of	June 30, 2010 and 2009	August 17, 2011
Plumbing, Board of	June 30, 2011 and 2010	March 27, 2012
Podiatry Examiners, Board of	December 31, 2009 and 2008	August 17, 2011
Potato Council	June 30, 2010 and 2009	June 21, 2012
Private Investigative and Security Board	December 31, 2010 and 2009	August 17, 2011
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2011	June 21, 2012
Professional Soil Classifiers, Board of Registration for	June 30, 2011	June 21, 2012
Professional Soil Classifiers, Board of Registration for	June 30, 2010	August 17, 2011
Protection and Advocacy Project	June 30, 2010 and 2009	August 17, 2011
Psychologist Examiners, Board of	June 30, 2011 and 2010	March 27, 2012
Public Accountancy, Board of	June 30, 2010	August 17, 2011
Public Accountancy, Board of	June 30, 2011	March 27, 2012
Public Employees Retirement System	June 30, 2010 and 2009	August 17, 2011
Public Employees Retirement System	June 30, 2011 and 2010	June 21, 2012
Public Finance Authority	December 31, 2010 and 2009	August 17, 2011
Public Finance Authority	December 31, 2011 and 2010	June 21, 2012
Public Instruction, Department of	June 30, 2011 and 2010	March 27, 2012
Public Service Commission	June 30, 2011 and 2010	October 17, 2012
Racing Commission	June 30, 2011 and 2010	June 21, 2012
Real Estate Commission	June 30, 2010	August 17, 2011
Real Estate Commission	June 30, 2011	March 27, 2012
Reflexology, State Board of	June 30, 2010	August 17, 2011
Retirement and Investment Office	June 30, 2011 and 2010	June 21, 2012
Retirement and Investment Office	June 30, 2010 and 2009	August 17, 2011
School of Medicine and Health Sciences performance audit followup	November 15, 2010	August 17, 2011
Secretary of State	June 30, 2010 and 2009	August 17, 2011
Securities Commissioner	June 30, 2010 and 2009	August 17, 2011
Seed Department	June 30, 2010 and 2009	August 17, 2011
Social Work Examiners, Board of	June 30, 2009 and 2008	August 17, 2011
Soybean Council	June 30, 2011 and 2010	March 27, 2012
Soybean Council	June 30, 2012 and 2011	October 17, 2012
State Auditor	June 30, 2011 and 2010	March 27, 2012
State College of Science, North Dakota	June 30, 2011 and 2010	June 21, 2012
State Fair Association	September 30, 2011 and 2010	June 21, 2012
State Fair Association	September 30, 2010 and 2009	August 17, 2011
State network security audit	September 28, 2012	October 17, 2012
State Treasurer	June 30, 2011 and 2010	October 17, 2012
State-supplied vaccines (performance audit)	September 29, 2011	March 27, 2012
Statewide CAFR	June 30, 2010	August 17, 2011

Statewide CAFR	June 30, 2011	March 27, 2012
Statewide single audit	June 30, 2010 and 2009	August 17, 2011
Stockmen's Association	December 31, 2009 and 2008	June 21, 2012
Stockmen's Association	December 31, 2010 and 2009	June 21, 2012
Stockmen's Association	December 31, 2011 and 2010	June 21, 2012
Student loan trust	June 30, 2010 and 2009	August 17, 2011
Student loan trust	June 30, 2011 and 2010	June 21, 2012
Tax Commissioner	June 30, 2011 and 2010	October 17, 2012
Tobacco Prevention and Control Policy, Center for	June 30, 2011 and 2010	June 21, 2012
Transportation, Department of	June 30, 2011 and 2010	June 21, 2012
University and School Lands, Board of	June 30, 2010 and 2009	August 17, 2011
University and School Lands, Board of	June 30, 2011 and 2010	June 21, 2012
University of North Dakota	June 30, 2011 and 2010	June 21, 2012
University System office	June 30, 2010 and 2009	March 27, 2012
Valley City State University	June 30, 2011 and 2010	June 21, 2012
Vehicle registration and titling system followup	March 27, 2012	June 21, 2012
Veterans' Affairs, Department of	June 30, 2010 and 2009	August 17, 2011
Veterans' Home	June 30, 2011 and 2010	October 17, 2012
Veterinary Medical Examiners, Board of	June 30, 2010 and 2009	August 17, 2011
Water Commission, State	June 30, 2011 and 2010	June 21, 2012
Water Well Contractors, Board of	June 30, 2010 and 2009	August 17, 2011
Wheat Commission	June 30, 2010 and 2009	August 17, 2011
Wildlife Services performance audit followup	October 6, 2010	August 17, 2011
Williston State College	June 30, 2011 and 2010	March 27, 2012
Workforce Safety and Insurance	June 30, 2010 and 2009	August 17, 2011
Workforce Safety and Insurance	June 30, 2011 and 2010	June 21, 2012

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 2013 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 make recommendations to adjust legislative compensation amounts;
4. Responsibility under Section 54-03-20 to establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session;
5. 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;
6. Responsibility under Section 4-24-10 to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees;
7. 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;
8. Authority under Section 46-02-05 to determine the contents of contracts for the printing of legislative bills, resolutions, and journals; and
9. 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 responsibilities under 2009 Session Laws, Chapter 29, Section 5, and 2011 Session Laws, Chapter 1, Section 6, to administer the appropriations 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), David Drovdal, Lee Kaldor, Jerry Kelsh, and Don Vigesaa and Senators Randel Christmann, Ralph L. Kilzer, Mac Schneider, Ryan M. Taylor, and Rich Wardner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

LEGISLATIVE SPACE RENOVATION PROJECTS

Legislative Chambers and Legislative Hall

During the 2009-10 interim, the committee received information from Facility Management on costs to renovate the brass in the chambers and areas in the legislative wing not included in the prior brass renovation project, to renovate the wood in the chambers and the legislative hall, and to restore the desks in the chambers through cleaning, stripping, repairing, staining, and refinishing.

Facility Management informed the committee of plans to issue a request for proposal (RFP) to refinish the wood in the chambers and the legislative hall and restore the brass finishings and columns in the chambers. At the request of the committee, Facility Management revised the RFP to include refinishing--cleaning and restoring the desktops, patching where appropriate, and patching the fronts and drawer faces--the wood desks in the chambers and to provide for the wood refinishing in the legislative hall as an additional alternative. The project was completed in July 2012 and included refinishing the wood and desktops in the chambers and restoring the brass in the chambers.

Prairie Room Committee Table

The committee approved installation of a new conference table in the Prairie Room. The new table is U-shaped, will seat 17, and includes power and data grommets so as to provide access the same as other committee room tables. Installation of this table completed the table replacement in the committee rooms.

Ground Floor Study Area

The committee approved installation of a conference table and 10 committee room-style chairs in the conference room in the northwest area of the ground floor study, and furniture replacement in the main area of the ground floor study.

Senate Balcony Areas

The committee approved installation of tables and chairs near the entrances to the Senate balcony, for use as session employee break areas.

Harvest and Roughrider Rooms Tables

The committee approved placement of a table in the Harvest and Roughrider Rooms to provide areas for materials that are available to meeting attendees.

Chamber Video

The committee approved installation of chamber video and audio recording equipment. The video equipment will provide "frontal" shots of legislators and full coverage of the chambers. Two cameras would be mounted at the front of each chamber to provide coverage of members, and one camera would be mounted at the rear of each chamber to provide coverage of the presiding officer and the front desk. The audio and video would be indexed, allowing direct access to specific content within the recordings, e.g., searching a bill number would result in a listing of all recordings for that number which would allow direct access to the specific recording sought. Plans are for the measure status information on the legislative branch website to include new links to the recordings at the point of action on the measure during the floor session.

The system would be controlled in each chamber by a recording clerk. The recording clerk, control station, and monitor would be located at the front desk. The audio system would continue to be separate from the video system, but the audio stream would be married to the video stream.

Chamber Voting System

The committee approved replacement of the voting system in each chamber. The existing system used technology that is approximately 15 years old. The new International Roll Call system provides for new member voting buttons and faceplates, new software for the presiding officers and desk forces, and new full-color display boards. The new system consists of Daktronics display boards and International Roll Call software.

Committee Room Presentation Equipment

The committee approved installation of committee room presentation equipment. The presentation equipment provides the ability to display information to be viewed by committee members and the public. The Harvest and Roughrider Rooms were completed last interim. Because of room shapes, some rooms have projectors and screens and other rooms have flat panel monitors.

Committee Room Video and Audio

The committee reviewed plans for including video and audio recording of meetings in committee rooms. Plans are for each committee room to be wired for video and audio recording and Internet streaming.

The committee approved the Harvest and Roughrider Rooms as the first rooms in which the video and audio capabilities will be installed after the 2013 legislative session.

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 each interim for use of the legislative chambers and displays in Memorial Hall.

During this interim, the committee approved requests for use of both chambers and legislative committee rooms by the North Dakota High School Activities Association State Student Congress on November 1-2, 2012, and on November 7-8, 2013; use of either chamber and two legislative committee rooms by the North Dakota State University Extension Service for the statewide 4-H Citizenship in Action mock legislative session on January 16, 2012, and use of either chamber by the Girl Scouts of America for a legislative process and debate program during recognition of the 100th anniversary of the Girl Scouts of America on July 14, 2012; use of the House chamber by the Secretary of State on February 22-23, 2012, for a statewide biennial election conference; use of the House chamber by the Land Department for oil and gas lease auctions on November 1, 2011, February 7, May 1, August 7, and November 6, 2012, and May 7, August 6, and November 5, 2013; and use of the House chamber and four committee rooms by the Silver Haired Education Association for the Silver Haired Legislative Assembly on July 25-27, 2012. In addition, approval under the guidelines was given for use of the House chamber by the Supreme Court on September 17, 2012, for the admission to the bar ceremony.

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.

The Legislative Management adopted the policy governing approval of use of committee rooms in 1998 and the committee has readopted the policy, with any necessary revision to address issues that have arisen. The policy also applies to 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.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee reviewed specific questions or comments recorded during the 2011 legislative session regarding rules issues. The committee also received a side-by-side comparison of Senate and House rules.

Senate and House Rules 206 - Officers and Employee Positions

As described earlier in this report, the committee approved installation of video equipment that will provide full coverage of the chambers. The system is to be controlled in each chamber by a recording clerk. The recording clerk, control station, and monitor will be located at the front desk. During floor sessions, the recording clerk will be responsible for determining the video feed that is streamed to the Internet. During other periods, the recording clerk will be under the supervision of the Secretary of the Senate or Chief Clerk of the House.

The committee recommends amendment of Senate and House Rules 206 to add the recording clerk as a Group B position in each house. (All employee positions located at the front desk are Group B positions.) Thus, the recording clerk will be appointed by the party having a majority of the members-elect, acting through the Employment Committee.

Senate and House Rules 342 - Announcement of Vote

Senate and House Rules 342 require the presiding officer to announce the vote, and declare whether the measure has passed, the title is agreed to, and whether the emergency clause, if any, has carried. Recent presiding officers have had difficulty with respect to declaring passage of a bill using formal grammar under which a sentence does not normally end with a preposition, i.e., "the title is agreed to."

The committee recommends amendment of Senate and House Rules 206 to eliminate the requirement that the presiding officer announce whether there is agreement to the title when a bill passes.

Senate and House Rules 346(2) - Transmittal of Measures

Senate and House Rules 346 provide that on the 38th and 39th legislative days and after the 59th legislative day the Secretary of the Senate or Chief Clerk of the House is to transmit measures to the other house immediately upon adjournment of that day's session. During the 2011 legislative session, a question arose as to which session during the day should be determinative for transmitting a measure upon adjournment.

The committee recommends amendment of Senate and House Rules 346(2) to clarify that on the 38th and 39th legislative days and after the 59th legislative day the Secretary of the Senate or Chief Clerk of the House is to transmit measures to the other house immediately upon adjournment of the last session on that day.

Senate and House Rules 601(3) - Placement of Amended Measure on Calendar

Senate and House Rules 601(3)(g) provide that all bills in the house of origin after the 32nd legislative day and all measures after the 55th legislative day must be placed on the calendar for second reading and final passage immediately after adoption of amendments. During the 2011 legislative session, a question arose as to when to act on measures placed on the calendar under this rule--immediately or as floor action proceeds through the 11th or 14th order.

The committee recommends amendment of Senate and House Rules 601(3)(g) to provide that bills in the house of origin after the 32nd legislative day and all measures after the 55th legislative day, placed on the calendar for second reading and final passage immediately after adoption of amendments, must be acted on immediately after placement on the calendar unless an objection is made. With respect to adoption of a batch of amendments in the House, the Speaker of the House is to announce whether the measures will be acted on immediately and the order in which the measures will be considered.

Joint Rule 501 - Fiscal Notes

Joint Rule 501 provides that the state agency or department preparing a fiscal note is to return the fiscal note along with the number of copies requested by the Legislative Council within five days from the date of the request. Requests of agencies to prepare fiscal notes are made electronically, fiscal notes are returned electronically, and fiscal notes are distributed to all legislators through the Legislator's Automated Work Station (LAWS) system. As such, there is little need to require the agency to continue to provide paper copies to the Legislative Council.

The committee recommends amendment of Joint Rule 501 to eliminate the requirement that an agency preparing a fiscal note is to provide copies and to eliminate paper copies except for the paper copy attached to the paper copy of the measure.

The committee also recommends amendment of Joint Rule 501 to provide that the agency preparing a fiscal note for an amended measure is to complete and return the fiscal note to the Legislative Council not later than one day from the date of the request. This requirement is new and is intended to get the information before the amended measure is given second reading. This new requirement complements a change in the procedure for requesting fiscal notes for amendments. Previously, the Legislative Council staff has requested a fiscal note for an amendment when the amendment has been adopted on the 6th order. Beginning in 2013, the Legislative Council staff plans to request a fiscal note for an amendment when the amendment is approved and reported out of committee.

Joint Rule 801.1 - Recording of Proceedings

In 2011, the Legislative Assembly enacted Section 54-03-30, which requires the Senate and House to adopt rules regarding the recording of Senate and House floor sessions. The Legislative Council is required to archive

all audio recordings of floor sessions. The recordings are public records that must be open and accessible for inspection during reasonable office hours.

As described earlier in this report, the committee approved installation of video and audio systems in both chambers which will result in indexed recordings of floor sessions. The video, along with the audio, of floor sessions will be live-streamed on the legislative branch website and will be archived, with access through the website.

The committee recommends creation of Joint Rule 801.1 to require both houses to record audio of floor proceedings; allow both houses to record video of floor proceedings; and require the Legislative Council to provide the electronic media, to provide public access to the recordings through the legislative branch website, and to maintain access in accordance with the council's records retention policy with respect to historical records. Under the records retention policy, historical records are maintained permanently.

Other Rules Proposals Considered

The committee reviewed proposals to allow a member to refer to another member by title and last name if done in a respectful manner; to allow only the Majority or Minority Leader or the Assistant Majority or Minority Leader to make certain motions during debate; to allow only the Majority or Minority Leader or the Assistant Majority or Minority Leader to make motions for reconsideration or suspension of rules; to allow an uncontested resolution that received a do pass or do pass as amended recommendation from the committee of referral to be placed on the consent calendar; and to require the house having possession of the bill to discharge its conference committee and appoint a new committee if the house rejects the conference committee report but desires continued conference.

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, daily journals, daily calendars, and committee hearing schedules. All of these documents are available on the legislative branch website.

Bills, Resolutions, and Journals Subscription

During the 2011 legislative session, 28 entities paid to pick up a set of bills and resolutions from the bill and journal room, 8 entities paid to pick up a set of journals, and 6 entities paid to receive the journal index.

The committee established the following fees with respect to these documents during the 2013 legislative session--$250 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and reengrossed bills and resolutions, $475 if mailed; $100 for a set of daily journals of the Senate and House, $240 if mailed; and $35 to receive the permanent 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. Two entities paid a $350 subscription fee to receive these reports from the bill and journal room during the 2011 legislative session, and one entity paid $490 to receive the reports by mail.

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 2013 bill status reports and pay a $395 subscription fee, $535 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 2011 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.

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. 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 recommends continuation of the incoming WATS line telephone message service for the 63rd 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.

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 63rd Legislative Assembly, the committee reduced the number of introduced bills and resolutions printed from 175 to 165, reduced the number of engrossed bills and resolutions printed from 175 to 165, and increased the number of permanent journal indexes printed from 170 to 200. The changes in the number of items printed are based on the count of items remaining after the 2011 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 2011.

LEGISLATIVE COMPENSATION

Legislative Compensation Review

In 2011 the Legislative Assembly repealed the Legislative Compensation Commission and amended Section 54-03-20 to provide that the Legislative Management is to make recommendations and submit any necessary legislation to adjust legislative compensation amounts.

The committee received information on legislative compensation and expenses, the process for adjusting compensation, legislative compensation increases compared to inflation and state employee salary increases, and legislative compensation levels in other states.

The consensus of committee members was that the 2013-15 budget of the Legislative Assembly should include funding for changes to legislative compensation the same as the percentage changes provided for state employee salary increases during the 2013-15 biennium and the necessary related statutory changes. The initial plan is to include funding to allow for a 3 percent annual increase in legislative compensation amounts for monthly pay, session pay, interim pay, and leaders' additional monthly pay.

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 $1,351 per month as reimbursement for lodging.

The committee recommends the legislative expense reimbursement policy for the 63rd Legislative Assembly be the same as that followed for the 62nd Legislative Assembly--reimbursable lodging expenses during a legislative session include utilities (electricity, heat, and water, including garbage collection and sewer charges), basic telephone service and telephone installation charges, snow removal expense, and furniture (rental of furniture and appliances and transit charges for moving rental furniture and appliances). In addition, the lodging expense reimbursement of two or more legislators sharing housing in a single dwelling is subject to approval by the Chairman of the Legislative Management, in accordance with Section 54-03-20.

LEGISLATIVE COMPUTERS

Legislator Data Plan Reimbursement

Legislators receive reimbursement for their mobile data plans two ways. The method for non-Verizon users requires legislators to submit a voucher at least quarterly to the Legislative Council. The method for Verizon users requires legislators to participate in split billing--their data costs associated with their plan are billed separately to the state of North Dakota. Both of these methods require the legislators to be the main cellular number on the contract, and a data plan must be selected individually for each device so actual costs can be reimbursed.

The current mobile data plan reimbursement is causing issues for legislators. The addition of data share plans is making it more difficult for legislators to select the best rates available for their particular situation. Split billing is not available for legislators on a data share plan. Legislators on split billing also experience customer service issues because they cannot upgrade, change contracts, or seek assistance with mobile data issues at storefront locations.

The committee approved a new method of reimbursing legislators for their data plans: effective November 1, 2012, all participating legislators are required to submit a request form for reimbursement of their mobile data costs to the Legislative Council, identifying data costs associated with legislative business, along with a copy of their wireless carrier bill identifying the mobile data costs. The Legislative Council will retain this request and bill and will provide monthly reimbursement at that level until the legislator incurs a change in mobile data cost, contract, or vendor. At such time, the legislator is to submit a new request form for reimbursement of the legislator's mobile data costs to the Legislative Council, identifying data costs

associated with legislative business, along with a new copy of the wireless carrier bill showing new mobile data costs.

The policy continues the practice of data reimbursement only, and allows the greatest flexibility for legislators. The policy allows participation in the most cost-effective data plans and allows legislators to use storefront locations to select new devices and change data plans, allowing for better customer support.

Legislator Computer Training

The organizational session agenda approved by the committee continues the computer training classes for veteran legislators beginning at 9:00 a.m. on Monday. The agenda also provides for a computer distribution and training session for new legislators at 3:15 p.m. on Monday in addition to the traditional training sessions for new legislators on Wednesday. In addition, the agenda includes tablet training sessions on Tuesday and Wednesday for returning legislators.

Personal Computer Use Policy

The committee reviewed the *Policy on Use of Personal Computers by Legislators,* last adopted in November 2010. The policy describes statutory restrictions on use of personal computers and governs use of state-owned personal computers and use of privately owned personal computers to access legislative information systems.

The committee adopted a revised policy that addresses the use of tablet computers, provides for copying of legislator information to replacement computers, includes a procedure on purchase of old computers, adds a fee for acquiring a replaced computer, and adds a computer assistance fee.

The policy regarding purchase of replaced computers requires the acquiring legislator to have paid the personal use fee for at least 12 months before the replacement, and follows the method followed by the State Surplus Property Division--the computer will be provided without any software, i.e., without any operating system or other software. This protects state licenses for the operating system and software on the replaced computer as well as eliminates the potential for legislative information to be transferred with the replaced computer.

The committee approved a fee of $100 to purchase a replaced computer which is approximately the same as the State Surplus Property Division has charged for other replaced computers.

The committee continued the personal use fee at $10 per month. When the committee adopted the revised policy in June 2012, 113 legislators were paying the personal use fee.

The revised policy provides for a fee established by the Legislative Procedure and Arrangements Committee with respect to assistance to legislators who experience problems with nonlegislative software or hardware. The committee approved a computer assistance fee of $75 per hour.

Computer Replacement

The majority leaders appointed a Computer Replacement Workgroup which focused on the types of computers to be provided to legislators to replace computers used by legislators and Legislative Assembly employees.

The workgroup focused on issues that included business class versus consumer class; screen size; screen resolution; weight; and hard drive encryption.

The workgroup recommended purchase of HP 8760w notebooks (having the 17.3" screen and weighing 8.3 pounds) with Microsoft Office 2010 for legislators and Legislative Assembly staff. The workgroup also recommended the purchase of an Apple iPad for each legislator who requests one. The workgroup members viewed the notebooks as more stationary (remaining in the chambers during the session and at home during the interim) and the tablets as the mobile unit taken to meetings. The tablets will provide mobile access to e-mail, the Legislative Council website, LAWS system, and information during meetings through wireless networks.

The committee approved the recommendations of the workgroup to purchase HP 8760w notebooks and Apple iPads.

SESSION ARRANGEMENTS

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 2013 legislative session under the same arrangements as in the past. The association is planning to rely on physicians and residents from around the state to volunteer for the program and provide basic health care services and referrals on most days during which the Legislative Assembly is in session.

Legislator Wellness Program

Section 54-52.1-14 requires the Public Employees Retirement System (PERS) Board to develop an employer-based wellness program encouraging employers to adopt a board-approved 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 program.

A wellness program must include the "mandatory activity" of communicating wellness materials provided by PERS and Blue Cross Blue Shield of North Dakota to individual employees on a monthly basis and promoting the PERS 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, 2012, through June 30, 2013, continuation of the comprehensive health assessment during the 2013 legislative session as provided through the doctor of the day program by the North Dakota Medical Association during the 2011 legislative session.

Legislators' Supplies

Stationery

Every legislator has been 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 also could 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 could receive as much regular and Monarch stationery as needed. In addition, an electronic letterhead has been provided to all legislators to use as a template so they can print correspondence on regular paper and envelopes.

The committee determined that legislators should be provided with an electronic letterhead for use in printing letters and envelopes rather than receive stationery and envelopes through a contract printer. The rationale for this change is that computers are provided to all legislators, and consequently there is little need for continuing to provide individualized stationery and envelopes when templates are provided for legislators to use through software on their computers.

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-style, rigid sided 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 card 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 card to present near a reader that unlocks the door and records use of the card. Each security card is coded, and a computerized record is kept of use. Since 2008 security access cards have been provided to legislators on request.

The committee approved continuation of the policy that a security card will be provided to a legislator who requests one and signs a form acknowledging receipt of the card.

Legislator Photo Identification Cards

The committee approved continuation of the policy of providing a credit card-size photo identification card to each legislator. Starting in 2010, each legislator was provided with a credit card-sized photo identification card containing the legislator's 2010 legislative photograph, a current signature of the legislator, the legislative session WATS line number (1-888-635-3447), the Legislative Council telephone number, and the Legislative Council WATS line number. A photo identification card expires upon the expiration of the term of the legislator. New cards will be issued to newly elected legislators and will contain the 2012 legislative photograph.

Legislator Photographs

The committee approved the invitation to bid for photography services to the 63rd Legislative Assembly. Generally, the invitation to bid contained the same specifications as the contract for the 62nd Legislative Assembly. The photographs of legislators are to be taken during the organizational session in 2012, 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 19, 2012, 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 22, 2013.

The invitation to bid was sent to 83 photography firms in central and western North Dakota. Six firms submitted bids--Glasser Images, Bismarck, $3,200; Anderson Photography, Crosby, $3,500; Image Photography, Mandan, $3,900; Scherling Photography, Bismarck, $3,900; Platinum Photography, Bismarck, $5,500; and Kennedys Photography, Jamestown, $11,200. The committee awarded the contract to the lowest bidder--Glasser Images.

Journal Distribution Policy

The committee approved discontinuation of the policy that a legislator may have daily journals sent, without charge, to any person upon approval of that legislator's leader. The policy is discontinued because of the availability of journal information through the legislative branch website.

Session Employee Positions

The committee reviewed the number of employee positions during the 1993 and 2011 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 1993 legislative session was used as a base session because legislative employment peaked during that session, with 59 Senate employees and 77 House employees.

The committee reviewed a legislative session employee position plan that proposed for 37 Senate employee positions and 43.5 House employee positions during the 2013 legislative session. The plan:

- Continued the four staff assistants authorized for the majority leaders and the four staff assistants authorized for the minority leaders.

- 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).
- Continued employment of a parking lot attendant by each house.
- Continued the number of assistant sergeants-at-arms in each house.
- Added a recording clerk position in each house.
- Eliminated the payroll clerk position, in recognition of the new requirements that anyone having access to the state's PeopleSoft payroll system must undergo criminal background checks, as well as the fact that after initial entry of legislator and legislative employee payroll information in December, the position requires only one to two days of entry per month.
- Eliminated one information kiosk position, in recognition of the added information monitors placed throughout the ground floor of the Capitol.

A representative of the House Employment Committee expressed concerns over the current staffing levels of the House. The suggestion was to continue with two information kiosk attendants, add one or two additional pages in the House, and add an assistant sergeant-at-arms in the House.

The committee recommends the Employment Committees provide for 38 Senate employee positions (to continue with the Senate employment of an information kiosk attendant) and 45.5 House employee positions (to add one page and one assistant sergeant-at-arms).

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 2011 legislative session. The committee received information on the effect of providing a general increase reflecting the increases of 3 percent and 3 percent approved by the 62nd Legislative Assembly for state employees in 2011 and 2012.

The committee recommends the daily compensation rates during the 2013 legislative session be increased to reflect increases of 3 percent and 3 percent. As a result of this recommendation, compensation will range from $104 to $171 per day ($13 to $21.38 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 Legislative Council staff will provide the orientation and training of legislative session employees. The training will be similar to that provided before the 2011 legislative session--the journal reporters will receive training before the organizational session convenes, and committee clerks and other employees needing specialized training will receive training in December.

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 each house employed a chief stenographer and payroll clerk. 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. 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. 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 2013 legislative session to provide five employees for secretarial, telephone message, and bill and journal room services. The onsite supervisor is to allocate employees between the secretarial and telephone message and the bill and journal room areas as needed.

The invitation to bid was sent to nine temporary personnel services in the Bismarck-Mandan area. The committee received one bid--$507 per day by Spherion Staffing, Bismarck. The hourly pay range is $11.50 for the employees and $12 for the onsite supervisor.

The committee recommends accepting the bid by Spherion Staffing to provide secretarial, telephone message, and bill and journal room services during the 2013 legislative session.

Secretarial Services Policy

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 2010. The policy points out that secretarial service employees are not legislative employees; describes secretarial services as being available between 7:00 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. 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 63rd Legislative Assembly, with up to 10 intern positions allocated to the University of North Dakota School of Law for assignment to the 3-day and 2-day standing committees and up to 2 intern positions allocated among participating entities as needed. The committee also authorized an increase in the stipend to $3,000 per month for the four-month program.

Legislative Tour Guide Program

During the past 18 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, 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 2013 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 2013 legislative session.

The committee authorized the Legislative Council staff to notify all legislators that they have until December 31, 2012, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2013 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2012 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. The agenda continues the provision of orientation classes for freshman legislators and computer training classes for veteran legislators beginning at 9:00 a.m. on Monday. A major change is the addition of a computer distribution and training session for new legislators at 3:15 p.m. on Monday. In addition, tablet training sessions have been added on Tuesday and Wednesday for returning legislators.

State of the State Address

During the 2011 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--one for the Lieutenant Governor, one for the Chief Justice, and one for the Governor and First Lady. 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 2013 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 2013 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 63rd Legislative Assembly on the third legislative day.

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 11, 2013--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 11, 2013.

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 report should be made to the Industry, Business and Labor Committees on the second legislative day those committees meet--Monday, January 14, 2013.

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.

SPECIAL SESSION ARRANGEMENTS

The committee reviewed three areas of consideration for the special session--legislative rules, session employees, and miscellaneous matters.

The committee submitted this portion of the report to the Legislative Management on November 3, 2011. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly, which met in special session November 7-11, 2011.

Legislative Rules

The committee reviewed the legislative rules amendments adopted during the 2001 special session, which was called primarily for legislative redistricting purposes. The amendments primarily addressed the introduction of measures, length of time to consider a measure after it is reported from committee, length of time to reconsider a measure, and special committees during the special session. The committee's recommendations are substantively similar to those rules amendments adopted during the 2001 special session.

The committee recommends amendment of Senate Rules 401(1), 402(1) and (2), and 403; House Rules 401(1), 402(1) and (3), and 403; and Joint Rule 208 to provide that bills and resolutions, other than bills and resolutions introduced by the Legislative Management, must be introduced through the Delayed Bills Committee of the house of introduction. The requirement for approval by the Delayed Bills Committee is intended to limit introduction of measures to those measures of significant importance for consideration during the special session. The special session is primarily to address legislative redistricting. By requiring measures to be introduced through the Delayed Bills Committees, bills and resolutions would be screened to assure promotion of this objective.

The committee recommends amendment of Senate and House Rules 504 to eliminate specific meeting days for committees. Although meetings may be called at times and on days as determined necessary, the specific listing of days that three-day and two-day committees

may meet could cause misconceptions if such committees met on other than regularly scheduled days.

The committee recommends amendment of Senate and House Rules 318(4), 337, and 601 and Joint Rule 207 to authorize a measure to be considered on the same day it is reported from committee or placed on the consent calendar. Thus, the normal timeframe for consideration of a measure is shortened from the day after a measure is reported from committee or placed on the consent calendar.

The committee recommends amendment of Senate Rule 333 to allow an amendment received on the second reading of a bill providing for redistricting of the Legislative Assembly to be proposed as a "concept" and the exact legal description would be developed after adoption of the "amendment." This is intended to limit the time taken for drafting and proofing exact legal descriptions of legislative districts to those ideas that receive support of a majority of the members.

The committee recommends amendment of Senate and House Rules 346 to authorize a measure to be transmitted to the other house immediately after approval unless a member gives notice of intention to reconsider. If notice is given, the measure cannot be transmitted until the end of that day. Without this amendment, the normal procedure would be to retain the measure until the end of the next legislative day.

The committee recommends amendment of Joint Rule 202 to allow either house to reconsider receding before a conference is called. Without the amendment, reconsideration could not be made until the next legislative day.

The committee recommends amendment of Joint Rule 501(4) to require the return of a fiscal note within one day of the request instead of five days. This recommendation recognizes the shortened timeframes for considering bills and resolutions during the special session.

The committee recommends creation of Joint Rules 303 and 304 to establish a Joint Legislative Redistricting Committee and a Joint Health Care Reform Committee. The Joint Legislative Redistricting Committee would be responsible for all bills and resolutions relating to redistricting. The Joint Health Care Reform Committee would be responsible for all bills and resolutions relating to state implementation of the Patient Protection and Affordable Care Act and related issues. With respect to other issues that may arise, the committee recommends using the regular standing committees of the Legislative Assembly and encourages use of joint hearings to reduce the potential for duplication of hearings within the abbreviated timeframe expected for the special session.

Session Employees

The committee reviewed the employee positions filled during the 2001 special session--10 Senate positions and 12 House positions. The committee determined that the Employment Committee of each house should determine the employee positions to be filled, especially due to the unknowns as to the number and subject matter of bills and resolutions to be considered during the special session. Based on positions determined as necessary by the Employment Committees, the committee recommends that the Senate Employment Committee employ 10 Senate employees, and the House Employment Committee employ 14 House employees for the 2011 special session. The employees and their positions can be designated by reports of the respective Employment Committees during the special session. The rates of pay for employees during the special session would be the compensation levels established by 2011 House Concurrent Resolution No. 3006, except for committee clerks. The committee recommends the employees assigned to staff committees be paid at the levels for five-day committee clerks because the committees would be meeting throughout the special session, without regard as to the normal five-day, three-day, and two-day classifications.

Miscellaneous Matters

The committee recognizes the nature of a special session for redistricting purposes would be limited in scope. As such, many services or items normally available during a regular session would not be feasible or economical during the special session. During the 2011 regular session, the telephone message, secretarial, and bill and journal room services were provided by private contractors (these services were not provided during the 2001 special session). During the 2011 special session, constituents can contact their legislators through regular channels or by e-mail directly to a legislator's notebook computer, and legislators can contact their constituents through regular channels or by telephone or e-mail.

The joint bill and journal room will not be open. Measures will be available on the legislative branch website, and copies of measures introduced will be available from the Legislative Council office. Daily journals will be available on the legislative branch website--the journals will not be printed daily but will be consolidated and printed after the session adjourns. The Legislator's Automated Work Station (LAWS) system will be available during the special session.

Committee hearing schedules will not be printed because it is anticipated committee hearings will be called on relatively short notice. Information on committee hearings may be obtained through the monitors on the ground floor and at the information kiosk.

Because of the unscheduled, irregular convening of floor sessions, the live streaming video coverage of floor sessions will not be available on the legislative branch website.

LEGISLATIVE REDISTRICTING COMMITTEE

The Legislative Redistricting Committee was assigned the responsibility to develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election. House Bill No. 1267 (2011) required the chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election and provided that the committee must consist of an equal number of members from the Senate and the House of Representatives appointed by the chairman of the Legislative Management. In addition, the bill provided:

1. The committee shall ensure that any legislative redistricting plan submitted to the Legislative Assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the Legislative Assembly.
2. The committee shall submit a redistricting plan and legislation to implement the plan to the Legislative Management by October 31, 2011.
3. A draft of a legislative redistricting plan created by the Legislative Council or a member of the Legislative Assembly is an exempt record as defined in North Dakota Century Code Section 44-04-17.1 until presented or distributed at a meeting of the Legislative Management or the Legislative Assembly. Any version of a redistricting plan created before the completion of the plan is an exempt record regardless of whether the completed plan is subsequently presented or distributed at a meeting.
4. The chairman of the Legislative Management shall request the Governor to call a special session of the Legislative Assembly pursuant to Section 7 of Article V of the Constitution of North Dakota to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the 2012 primary election and to address any other issue that may be necessary, including consideration of legislation in response to federal health care reform legislation.

Committee members were Senators Ray Holmberg (Chairman), Randel Christmann, Dwight Cook, Tony Grindberg, Jerry Klein, Stanley W. Lyson, Ryan M. Taylor, and John Warner and Representatives Larry Bellew, Bill Devlin, Richard Holman, Nancy Johnson, Jim Kasper, Jerry Kelsh, David Monson, and Mike Nathe.

The committee submitted this report to the Legislative Management on November 3, 2011. The Legislative Management accepted the report, except for the recommendation of the bill draft that would have required at least six precincts for each legislative district for submission to the Legislative Assembly.

BACKGROUND

Redistricting History in North Dakota

1931-1962

Despite a requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided that (1) the Legislative Assembly must apportion itself after each federal decennial census; and (2) if the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment. Because the 1961 Legislative Assembly did not apportion itself following the 1960 census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the majority and minority leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined that the plan was unconstitutional, and the 1931 plan continued to be law.

1963

In 1963 the Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of the state constitution were challenged in federal district court and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F.Supp. 183 (1964). The 1931 plan also was held invalid. Thus, there was no constitutionally valid legislative redistricting law in existence at that time. The court concluded that adequate time was not available with which to formulate a proper plan for the 1964 election, and the Legislative Assembly should promptly devise a constitutional plan.

1965

A conference committee during the 1965 legislative session (consisting of the majority and minority leaders of each house and the chairmen of the State and Federal Government Committees) produced a redistricting plan. In *Paulson v. Meier*, 246 F.Supp. 36 (1965), the federal district court found the 1965 redistricting plan unconstitutional. The court reviewed each plan introduced during the 1965 legislative session and specifically focused on a plan prepared for the Legislative Research Committee (predecessor to the Legislative Council and the Legislative Management) by two consultants hired by the committee to devise a redistricting plan. That plan had been approved by the interim Constitutional Revision Committee and the Legislative Research Committee and was submitted to the Legislative Assembly in 1965. The court slightly modified that plan and adopted it as the plan for North Dakota. The plan contained five multimember senatorial districts, violated county lines in 12 instances, and had 25 of 39 districts within 5 percent

of the average population, 4 districts slightly over 5 percent, and 2 districts exceeding 9 percent.

1971

In 1971 an original proceeding was initiated in the North Dakota Supreme Court challenging the right of senators from multimember districts to hold office. The petitioners argued that the multimembership violated Section 29 of the Constitution of North Dakota, which provided that each senatorial district "shall be represented by one senator and no more." The court held that Section 29 was unconstitutional as a violation of the equal protection clause of the United States Constitution and that multimember districts were permissible. *State ex rel. Stockman v. Anderson*, 184 N.W.2d 53 (1971).

In 1971 the Legislative Assembly failed to redistrict itself after the 1970 federal census, and an action was brought in federal district court which requested that the court order redistricting and declare the 1965 plan invalid. The court entered an order to the effect the existing plan was unconstitutional, and the court would issue a plan. The court appointed three special masters to formulate a plan and adopted a plan submitted by Mr. Richard Dobson. The "Dobson" plan was approved for the 1972 election only. The court recognized weaknesses in the plan, including substantial population variances and a continuation of multimember districts.

1973-75

In 1973 the Legislative Assembly passed a redistricting plan developed by the Legislative Council's interim Committee on Reapportionment, which was appointed by the Legislative Council chairman and consisted of three senators, three representatives, and five citizen members. The plan was vetoed by the Governor, but the Legislative Assembly overrode the veto. The plan had a population variance of 6.8 percent and had five multimember senatorial districts. The plan was referred and was defeated at a special election held on December 4, 1973.

In 1974 the federal district court in *Chapman v. Meier*, 372 F.Supp. 371 (1974) made the "Dobson" plan permanent. However, on appeal, the United States Supreme Court ruled the "Dobson" plan unconstitutional in *Chapman v. Meier*, 420 U.S. 1 (1975).

In 1975 the Legislative Assembly adopted the "Dobson" plan but modified it by splitting multimember senatorial districts into subdistricts. The plan was proposed by individual legislators and was heard by the Joint Reapportionment Committee, consisting of five senators and five representatives. The plan was challenged in federal district court and was found unconstitutional. In *Chapman v. Meier*, 407 F.Supp. 649 (1975), the court held that the plan violated the equal protection clause because of the total population variance of 20 percent. The court appointed a special master to develop a plan, and the court adopted that plan.

1981

In 1981 the Legislative Assembly passed House Concurrent Resolution No. 3061, which directed the Legislative Council to study and develop a legislative redistricting plan. The Legislative Council chairman appointed a 12-member interim Reapportionment Committee consisting of seven representatives and five senators. The chairman directed the committee to study and select one or more redistricting plans for consideration by the 1981 reconvened Legislative Assembly. The committee completed its work on October 6, 1981, and submitted its report to the Legislative Council at a meeting of the Council in October 1981.

The committee instructed its consultant, Mr. Floyd Hickok, to develop a plan for the committee based upon the following criteria:

1. The plan should have 53 districts.
2. The plan should retain as many districts in their present form as possible.
3. No district could cross the Missouri River.
4. The population variance should be kept below 10 percent.

Mr. Hickok presented a report to the committee in which the state was divided into 11 blocks. Each block corresponded to a group of existing districts with only minor boundary changes. The report presented a number of alternatives for dividing most blocks. There were 27,468 different possible combinations among the alternatives presented.

The bill draft recommended by the interim committee incorporated parts of Mr. Hickok's plans and many of the plans presented as alternatives to the committee. The plan was introduced in a reconvened session of the Legislative Assembly in November 1981 and was heard by the Joint Reapportionment Committee.

The committee considered a total of 12 legislative redistricting bills. The Legislative Assembly adopted a redistricting plan that consisted of 53 senatorial districts. The districts containing the Grand Forks and Minot Air Force Bases were combined with districts in those cities, and each elected two senators and four representatives at large.

1991-95

In 1991 the Legislative Assembly adopted House Concurrent Resolution No. 3026, which directed a study of legislative apportionment and development of legislative reapportionment plans for use in the 1992 primary election. The resolution encouraged the Legislative Council to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts had to be compact and of contiguous territory except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
2. Legislative districts could have a population variance from the largest to the smallest in population not to exceed 9 percent of the population of the ideal district except as was

necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
3. No legislative district could cross the Missouri River.
4. Senators elected in 1990 could finish their terms, except that in those districts in which over 20 percent of the qualified electors were not eligible to vote in that district in 1990, senators had to stand for reelection in 1992.
5. The plan or plans developed were to contain options for the creation of House subdistricts in any Senate district that exceeds 3,000 square miles.

The Legislative Council established an interim Legislative Redistricting and Elections Committee, which undertook the legislative redistricting study. The committee consisted of eight senators and eight representatives. The Council contracted with Mr. Hickok to provide computer-assisted services to the committee.

After the committee held meetings in several cities around the state, the committee requested the preparation of plans for 49, 50, and 53 districts based upon these guidelines:

1. The plans could not provide for a population variance over 10 percent.
2. The plans could include districts that cross the Missouri River so the Fort Berthold Reservation would be included within one district.
3. The plans had to provide alternatives for splitting the Grand Forks Air Force Base and the Minot Air Force Base into more than one district and alternatives that would allow the bases to be combined with other contiguous districts.

The interim committee recommended two alternative bills to the Legislative Council at a special meeting held in October 1991. Both of the bills included 49 districts. Senate Bill No. 2597 (1991) split the two Air Force bases so neither base would be included with another district to form a multisenator district. Senate Bill No. 2598 (1991) placed the Minot Air Force Base entirely within one district so the base district would be combined with another district.

During a special session held November 4-8, 1991, the Legislative Assembly adopted Senate Bill No. 2597 with some amendments with respect to district boundaries. (The bill was heard by the Joint Legislative Redistricting Committee.) The bill was also amended to provide that any senator from a district in which there was another incumbent senator as a result of legislative redistricting had to be elected in 1992 for a term of four years, to provide that the senator from a new district created in Fargo had to be elected in 1992 for a term of two years, and to include an effective date of December 1, 1991. In addition, the bill was amended to include a directive to the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

The Legislative Council again contracted with Mr. Hickok to provide services for the subdistrict study. After conducting the subdistrict study, the interim committee recommended House Bill No. 1050 (1993) to establish House subdistricts within each Senate district except in Districts 18, 19, 38, and 40, which are the districts that include portions of the Air Force bases. In 1993 the Legislative Assembly did not adopt the subdistricting plan.

In 1995 the Legislative Assembly adopted House Bill No. 1385, which made final boundary changes to four districts, including placing a small portion of the Fort Berthold Reservation in District 33.

2001

In 2001 the Legislative Assembly budgeted $200,000 for a special session for redistricting and adopted House Concurrent Resolution No. 3003, which provided for a study and the development of a legislative redistricting plan or plans for use in the 2002 primary election. The Legislative Council appointed an interim Legislative Redistricting Committee consisting of 15 members to conduct the study. The Legislative Redistricting Committee began its work on July 9, 2001, and submitted its final report to the Legislative Council on November 6, 2001.

The Legislative Council purchased two personal computers and two licenses for redistricting software for use by each political faction represented on the committee. Because committee members generally agreed that each caucus should have access to a computer with the redistricting software, the committee requested the Legislative Council to purchase two additional computers and two additional redistricting software licenses. In addition, each caucus was provided a color printer.

The Legislative Redistricting Committee considered redistricting plans based on 45, 47, 49, 51, and 52 districts. The committee determined that the various plans should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible.
3. Provide for a population variance of under 10 percent.

The interim committee recommended Senate Bill No. 2456 (2001), which established 47 legislative districts. The bill repealed the existing legislative redistricting plan, required the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provided an effective date of December 7, 2001. The bill also addressed the staggering of terms in even-numbered and odd-numbered districts.

Under the 47-district plan, the ideal district size was 13,664. Under the plan recommended by the committee, the largest district had a population of 14,249 and the smallest district had a population of 13,053. Thus, the largest district was 4.28 percent over the ideal district size, and the smallest district was 4.47 percent below the ideal district size, providing for an overall range of 8.75 percent.

During a special session held November 26-30, 2001, the Legislative Assembly adopted the 47-district

plan included in Senate Bill No. 2456 with amendments, most notably amendments to the provisions relating to the staggering of terms. (The bill was heard by the Joint Legislative Redistricting Committee.) The term-staggering provisions provided that a senator and a representative from an odd-numbered district must be elected in 2002 for a term of four years, and a senator and a representative from an even-numbered district must be elected in 2004 for a term of four years. The bill further included provisions to address situations in which multiple incumbents were placed within the same district and in which there were fewer incumbents than the number of seats available. In *Kelsh v. Jaeger*, 641 N.W.2d 100 (2002), the North Dakota Supreme Court found a portion of the staggering provisions to be an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years.

North Dakota Redistricting Law

Constitutional Provisions

Article IV, Section 1, of the Constitution of North Dakota, provides that the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Article IV, Section 2, requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." In addition, that section provides that the districts ascertained after the 1990 federal decennial census must continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates."

Under that section, one senator and at least two representatives must be apportioned to each senatorial district. Section 2 also provides that two senatorial districts may be combined when a single senatorial district includes a federal facility or installation containing over two-thirds of the population of a single member senatorial district and that elections may be at large or from subdistricts.

Article IV, Section 3, requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

Statutory Provisions

In addition to the constitutional requirements, Section 54-03-01.5 provides that a legislative apportionment plan based on any census taken after 1999 must provide that the Senate consist of 47 members and the House consist of 94 members. That section also provides that the plan must ensure that population deviation from district to district be kept at a minimum. In addition, that section provides that the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

Sections 54-03-01.8 and 54-03-01.10 provided for the staggering of Senate and House terms after redistricting in 2001. Section 54-03-01.8, which addressed the staggering of Senate terms, was found to be, in part, an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years.

As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, in 1991 the Legislative Assembly amended Section 16.1-01-02.2 during the November 1991 special session. The amendment to the section provided that "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan."

Section 16.1-03-17 provides that if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the Secretary of State shall establish a timetable for the reorganization of the parties before the ensuing election.

Section 16.1-04-03 provides that the board of county commissioners or the governing body of a city responsible for establishing precincts within the county or city must establish or reestablish voting precincts within 35 days after the effective date of a legislative redistricting.

Federal Redistricting Law

Before 1962 the courts followed a policy of nonintervention with respect to legislative redistricting. However, in 1962, the United States Supreme Court, in *Baker v. Carr*, 369 U.S. 186 (1962), determined that the courts would provide relief in state legislative redistricting cases when there are constitutional violations.

Population Equality

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held that the equal protection clause of the 14th Amendment to the United States Constitution requires states to establish legislative districts substantially equal in population. The Court also ruled that both houses of a bicameral legislature must be apportioned on a population basis. Although the Court did not state what degree of population equality is required, it stated that "what is marginally permissible in one state may be unsatisfactory in another depending upon the particular circumstances of the case."

The measure of population equality most commonly used by the courts is overall range. The overall range of a redistricting plan is the sum of the deviation from the ideal district population (the total state population divided

by the number of districts) of the most and the least populous districts. In determining overall range, the plus and minus signs are disregarded, and the number is expressed as an absolute percentage.

In *Reynolds*, the United States Supreme Court recognized a distinction between congressional and legislative redistricting plans. That distinction was further emphasized in a 1973 Supreme Court decision, *Mahan v. Howell*, 410 U.S. 315 (1973). In that case, the Court upheld a Virginia legislative redistricting plan that had an overall range among House districts of approximately 16 percent. The Court stated that broader latitude is afforded to the states under the equal protection clause in state legislative redistricting than in congressional redistricting in which population is the sole criterion of constitutionality. In addition, the Court said the Virginia General Assembly's state constitutional authority to enact legislation dealing with political subdivisions justified the attempt to preserve political subdivision boundaries when drawing the boundaries for the House of Delegates.

A 10 percent standard of population equality among legislative districts was first addressed in two 1973 Supreme Court decisions--*Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973). In those cases, the Court upheld plans creating house districts with overall ranges of 7.8 percent and 9.9 percent. The Court determined the overall ranges did not constitute a prima facie case of denial of equal protection. In *White*, the Court noted, "Very likely larger differences between districts would not be tolerable without justification 'based on legitimate considerations incident to the effectuation of a rational state policy'."

Justice Brennan's dissents in *Gaffney* and *White* argued that the majority opinions established a 10 percent de minimus rule for state legislative district redistricting. He asserted that the majority opinions provided that states would be required to justify overall ranges of 10 percent or less. The Supreme Court adopted that 10 percent standard in later cases.

In *Chapman v. Meier*, 420 U.S. 1 (1975), the Supreme Court rejected the North Dakota Legislative Assembly redistricting plan with an overall range of approximately 20 percent. In that case, the Court said the plan needed special justification, but rejected the reasons given, which included an absence of a particular racial or political group whose power had been minimized by the plan, the sparse population of the state, the desire to maintain political boundaries, and the tradition of dividing the state along the Missouri River.

In *Conner v. Finch*, 431 U.S. 407 (1977), the Supreme Court rejected a Mississippi plan with a 16.5 percent overall range for the Senate and a 19.3 percent overall range for the House. However, in *Brown v. Thomson*, 462 U.S. 835 (1983), the Court determined that adhering to county boundaries for legislative districts was not unconstitutional even though the overall range for the Wyoming House of Representatives was 89 percent.

In *Brown*, each county was allowed at least one representative. Wyoming has 23 counties and its legislative apportionment plan provided for 64 representatives. Because the challenge was limited to the allowance of a representative to the least populous county, the Supreme Court determined that the grant of a representative to that county was not a significant cause of the population deviation that existed in Wyoming. The Court concluded that the constitutional policy of ensuring that each county had a representative, which had been in place since statehood, was supported by substantial and legitimate state concerns and had been followed without any taint of arbitrariness or discrimination. The Court found that the policy contained no built-in biases favoring particular interests or geographical areas and that population equality was the sole other criterion used. The Court stated that a legislative apportionment plan with an overall range of less than 10 percent is not sufficient to establish a prima facie case of invidious discrimination under the 14th Amendment which requires justification by the state. However, the Court further concluded that a plan with larger disparities in population creates a prima facie case of discrimination and must be justified by the state.

In *Brown*, the Supreme Court indicated that giving at least one representative to each county could result in total subversion of the equal protection principle in many states. That would be especially true in a state in which the number of counties is large and many counties are sparsely populated and the number of seats in the legislative body does not significantly exceed the number of counties.

In *Board of Estimate v. Morris*, 489 U.S. 688 (1989), the Supreme Court determined an overall range of 132 percent was not justified by New York City's proffered governmental interests. The city argued that because the Board of Estimate was structured to accommodate natural and political boundaries as well as local interests, the large departure from the one-person, one-vote ideal was essential to the successful government of the city--a regional entity. However, the Court held that the city failed to sustain its burden of justifying the large deviation.

In a federal district court decision, *Quilter v. Voinovich*, 857 F.Supp. 579 (N.D. Ohio 1994), the court ruled that a legislative district plan with an overall range of 13.81 percent for House districts and 10.54 percent for Senate districts did not violate the one-person, one-vote principle. The court recognized the state interest of preserving county boundaries, and the plan was not advanced arbitrarily. The decision came after the Supreme Court remanded the case to the district court. The Supreme Court stated that in the previous district court decision, the district court mistakenly held that total deviations in excess of 10 percent cannot be justified by a policy of preserving political subdivision boundaries. The Supreme Court directed the district court to follow the analysis used in *Brown*, which requires the court to determine whether the plan could reasonably be said to advance the state's policy, and if so, whether the population disparities exceed constitutional limits.

Although the federal courts have generally maintained a 10 percent standard, a legislative

redistricting plan within the 10 percent range may not be safe from a constitutional challenge if the challenger is able to show discrimination in violation of the equal protection clause. In *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004), a federal district court in Georgia found two legislative redistricting plans adopted by the Georgia General Assembly which had an overall range of 9.98 percent violated the "one person one vote" principle. Although legislators and redistricting staff indicated they prepared the plans under the belief that an overall range of 10 percent would be permissible without demonstrating a legitimate state interest, the district court found that the objective of the plan, protection of certain geographic areas and protection of incumbents from one party did not justify the deviations from population inequality, particularly in light of the fact that plans with smaller deviations had been considered. With respect to protection of incumbents, the court indicated that while it may be a legitimate state interest, in this case the protection was not accomplished in a consistent and neutral manner. Although protection of political subdivision boundaries is viewed as a traditional redistricting principle, the court held that regional protectionism was not a legitimate justification for the deviations in the plans. The United States Supreme Court upheld the district court opinion in *Larios*.

If a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate that the plan is necessary to implement a rational state policy and that the plan does not dilute or eliminate the voting strength of a particular group of citizens. A plan with an overall range under 10 percent may be subject to challenge if the justifications for the deviations are not deemed legitimate and plans with lower deviations have been considered.

Partisan Gerrymandering

Before 1986 the courts took the position that partisan or political gerrymandering was not justiciable. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the United States Supreme Court stated that political gerrymandering is justiciable. However, the Court determined that the challengers of the legislative redistricting plan failed to prove that the plan denied them fair representation. The Court stated that a particular "group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." The Court concluded that "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." Therefore, to support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

In 1988 a federal district court in California determined that a partisan gerrymandering case was justiciable. In *Badham v. Eu*, 694 F.Supp. 664 (1988), the court ruled that the challengers of the California congressional redistricting plan failed to demonstrate that they had been denied a fair chance to influence the political process. The Supreme Court summarily affirmed the district court's ruling without an opinion in 1989.

In 2004 a sharply divided Supreme Court addressed a challenge to a congressional redistricting plan adopted in Pennsylvania. In *Vieth v. Jubelirer*, 541 U.S. 267 (2004), four of the justices concluded that partisan gerrymandering cases are nonjusticiable due to a lack of judicially discernible and manageable standards for addressing the claims. One other justice concurred in the opinion, but on other grounds, and the remaining four justices issued three dissenting opinions. Despite the challenge being dismissed, a majority of the court--the four dissenting justices and the one justice concurring in the decision to dismiss the claim--continued to maintain that partisan gerrymandering cases may be adjudicated by the courts.

The Supreme Court again issued a divided opinion two years later in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006). In that decision, six justices wrote opinions and five justices agreed that partisan gerrymandering cases are justiciable. However, the court did not agree on a standard for addressing claims and the partisan gerrymandering claim was dismissed. Thus, although it appears partisan gerrymandering cases may be justiciable, proving unconstitutional discrimination is a very difficult task for which there is no clear standard of proof.

Multimember Districts and Racial or Language Minorities

According to data compiled by the National Conference of State Legislatures, North Dakota is 1 of 13 states that have multimember districts. Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. A violation of Section 2 may be proved through a showing that as a result of the challenged practice or standard, the challengers of the plan did not have an equal opportunity to participate in the political process and to elect candidates of their choice.

Many of the decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial and language minorities. In *Reynolds*, the United States Supreme Court held that multimember districts are not unconstitutional per se; however, the Court has indicated it prefers single-member districts, at least when the courts draw the districts in fashioning a remedy for an invalid plan. The Court has stated that a redistricting plan including multimember districts will constitute an invidious discrimination only if it can be shown that the plan, under the circumstances of a particular case, would operate to minimize or eliminate the voting

strength of racial or political elements of the voting population.

The landmark case addressing a Section 2 challenge is *Thornburg v. Gingles*, 478 U.S. 39 (1986). In that case, the Supreme Court stated that a minority group challenging a redistricting plan must prove that:

1. The minority is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The minority is politically cohesive; and
3. In the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove that bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.

Until redistricting in the 1990s, racial gerrymandering--the deliberate distortion of boundaries for racial purposes--had generally been used in the South to minimize the voting strength of minorities. However, because the United States Department of Justice and some federal courts had indicated that states would be required to maximize the number of minority districts when redistricting, many states adopted redistricting plans that used racial gerrymandering to create more minority districts or to create minority influence districts when there was not sufficient population to create a minority district. As a result, a number of redistricting plans adopted in the 1990s were challenged by white voters on equal protection grounds and the United States Supreme Court has subsequently held several redistricting plans to be unconstitutional as a result of racial gerrymandering.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court invalidated a North Carolina plan due to racial gerrymandering. In that case, the Court made it clear that race-conscious redistricting may not be impermissible in all cases. However, the Court held the plan to a test of strict scrutiny and required that the racial gerrymander be narrowly tailored to serve a compelling state interest. The Court stated if race is the primary consideration in creating districts "without regard for traditional districting principles," a plan may be held to be unconstitutional.

Through the *Shaw* decision and subsequent decisions of the United States Supreme Court, the Court indicated that unless race was the predominant factor in the creation of a district, a racial gerrymander challenge is not likely to be successful. In addition, the Court articulated seven policies that have been identified as being "traditional districting principles." Those policies are:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.
7. Compliance with Section 2 of the Voting Rights Act.

Section 5 of the Voting Rights Act requires certain states and political subdivisions to submit their redistricting plans to the United States Department of Justice or the district court of the District of Columbia for review. North Dakota is not subject to that requirement.

TESTIMONY AND COMMITTEE CONSIDERATIONS

Redistricting Computers and Software

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased an additional computer and redistricting software license for the shared use of the members of those groups. The members of the committee were encouraged to use the redistricting software to develop redistricting plans to present for the review of the committee at each meeting. Because committee members generally agreed that potential redistricting plans should be based upon the cores of existing districts, a template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts.

Size of Legislative Assembly

The committee received testimony requesting the committee to consider redistricting plans that would increase the size of the Legislative Assembly as an attempt to preserve more existing districts and lessen the impact of redistricting on rural areas of the state. Proponents of increasing the size of the Legislative Assembly contended the cost of adding members to the Legislative Assembly would be minimal with respect to the benefits of additional representation for residents of the state in areas that have seen population losses result in legislative districts that are larger in geographic size than some states.

The committee received information estimating the cost of a legislative district, based on a 77-day legislative session and current statutory provisions regarding salary, benefits, per diem, and other reimbursements for members of the Legislative Assembly, would be approximately $1,190,170 for the decade.

Proponents of maintaining 47 legislative districts argued that increasing the number of districts to 49 or 51 would not significantly change the geographic size of most rural districts and would provide additional representation to the urban areas of the state in which the majority of the population resides. Under a 47-district plan, the ideal district population is 14,310, while under a 49-district plan the ideal district population would decrease by less than 600 to 13,726 and the ideal district population for a 51-district plan would be 13,188. Proponents of a 47-district plan also contended that legislators in North Dakota represent significantly fewer persons than legislators in any other state and there are legislative districts in other large rural states which are significantly larger than the largest district in North Dakota.

Population Deviation

Although an overall range of 10 percent has generally been considered as an acceptable level of population deviation, members of the committee generally agreed any plan recommended by the committee should have an overall range of 9 percent or less.

The committee considered a plan that had an overall deviation of 9.67 percent, with the largest district 4.89 percent over the ideal district population and the smallest district 4.78 percent below the ideal district population. Proponents of this plan contended the higher deviation could be justified as an attempt to preserve county boundaries and other communities of interests. The other plan considered by the committee had an overall deviation of 8.38 percent, with the largest district 4.10 percent over the ideal district population and the smallest district 4.28 percent below the ideal district population.

Preservation of Political Subdivision Boundaries

The redistricting plan adopted by the 2001 Legislative Assembly had 28 counties that were not split, not including 3 counties that were split to keep the Fort Berthold Indian Reservation within one district and 4 counties that were split among districts only because the counties included cities that were too large for one district.

Committee members generally agreed that preservation of county boundaries was a preferred approach to creating district boundaries. The committee received testimony requesting the committee to avoid splitting counties whenever possible. The committee considered a plan that included 32 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Indian Reservation, and 2 counties that were split only because the counties included cities that were too large for one district. The second plan the committee considered included 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Indian Reservation, and 3 counties that were split only because the counties included cities that were too large for one district.

Indian Reservations

The members of the committee agreed that splitting the minority population living on the Indian reservations would be contrary to the principle of protecting the interests of racial minority voters. Each plan considered by the committee preserved the boundaries of the Indian reservations.

Urban and Rural Considerations

Committee members discussed the benefits and potential problems associated with creating districts that would split the population of some of the mid-sized cities into two districts and combine the portions of those cities with rural areas. Proponents of this concept contended the geographic area of some rural districts could be reduced significantly while maintaining communities of interest since the rural residents of the areas around those cities generally migrated toward those cities as trade centers. Other members of the committee stated the concept had been tried in the past and was not generally favored because the residents of the portion of the district with fewer residents often feel disenfranchised.

Committee members also discussed the merits of creating urban districts with population totals below the ideal district size, particularly in areas in which population trends indicate continuing growth, and creating districts with population totals above the ideal district size in areas in which trends indicate continued decreasing population.

Population Growth in Boom Areas

Concerns were expressed regarding the accuracy of census data in areas of the state which have experienced significant population growth as a result of energy development. Because the population results reported by the Census Bureau reflect the population at the time the census is taken, many areas of the state which have experienced dramatic population growth in the last year are likely to have significantly more residents who may not be considered in creating legislative districts.

Identifiable District Boundaries

The committee received testimony from an election officer requesting that district boundaries be easily identifiable for the benefit of voters. It was argued that boundaries should be crafted to follow major streets and other easily identified geographic features rather than features such as city limits. It was also contended that in addition to being difficult to identify, boundaries based on city limits create confusion when cities annex areas throughout the decade and the city limits change due to the annexations.

Staggering of Terms

The committee reviewed information regarding the procedures for staggering the terms of senators from the 1981 and 1991 redistricting processes, and because members of the House of Representatives also now have four-year terms, the committee also reviewed the procedure used for the staggering of terms of House members in 2001. Options that were presented to the committee included requiring each member of the Legislative Assembly to run for election after redistricting, requiring members to run if there is a substantial change in population in the new district, and requiring members to run only if more than the required number of incumbents reside in the new district.

Creation of Voting Precincts

The committee discussed the creation of voting precincts by cities and counties. A member of the committee expressed concerns regarding the governing body of a large county considering having as few as two precincts per district, which could result in making it difficult for officials from political parties to identify where the support for the party is located. The committee considered a bill draft that would require that each

legislative district contain at least six precincts. Opponents of the bill draft contended that voters desire convenience in voting such as vote centers and voting by mail. In addition, it was argued if there is a problem with limited precincts, the problem may be limited to one county and the bill draft may have unintended consequences that should be further explored before approval of the bill draft.

RECOMMENDATIONS

The committee recommends House Bill No. 1473 to establish 47 legislative districts. The bill repeals the current legislative redistricting plan, requires the Secretary of State to modify 2012 primary election deadlines and procedures if necessary, and provides an effective date of December 1, 2011.

The bill also provides that senators and representatives from even-numbered districts must be elected in 2012 for four-year terms; senators and representatives from odd-numbered districts must be elected in 2014 for four-year terms; a senator and two representatives from District 7 must be elected in 2012 for terms of two years; the term of office of a member of the Legislative Assembly elected in an odd-numbered district in 2010 for a term of four years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012; and a member of the Legislative Assembly who was elected from an odd-numbered district in 2010 for a term of four years and who as a result of legislative redistricting is placed in an even-numbered district may continue to serve the remainder of the term for which the member was elected beyond December 1, 2012, if the member changes the member's place of residence to a location in the odd-numbered district which is within the geographic area of the odd-numbered district from which the member was elected by March 15, 2012, and certifies in writing to the Secretary of State and the chairman of the Legislative Management that the member has established a new residence in that district. The bill provides that if the member does not establish residency within the district from which the member was elected by March 15, 2012, the term of office of that member terminates on December 1, 2012.

The bill also provides the term of office of a member of the Legislative Assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than 25 percent of the ideal district population terminates on December 1, 2012. The bill states that a vacancy caused in an odd-numbered district as a result of legislative redistricting must be filled at the 2012 general election by electing a member to a two-year term of office.

Under the 47-district plan, the ideal district size is 14,310. Under the plan recommended by the committee, the largest district has a population of 14,897 and the smallest district has a population of 13,697. Thus, the largest district is 4.10 percent over the ideal district size and the smallest district is 4.28 percent below the ideal district size, providing for an overall range of 8.38 percent. The plan includes 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Indian Reservation, and 3 counties that were split only because the counties included cities that were too large for one district. Population data and maps of the proposed districts are included with this report.

[The Legislative Management rejected the following portion of the report. That portion of the report is printed here pursuant to Rule 5 of the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management*.]

The committee also recommends a bill draft that requires that each legislative district contain at least six precincts.

NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned three studies. Section 5 of 2011 House Bill No. 1014 directed a study of primacy in the administration of federal Environmental Protection Agency (EPA) regulations. Section 5 of 2011 House Bill No. 1046 directed a study of potash mining and taxation issues. Section 1 of 2011 Senate Bill No. 2234 directed a study of various mechanisms for improving coordination and consultation regarding federal designations over land or water resources in North Dakota. The committee was assigned by the Legislative Management the duty to receive a report from the Game and Fish Department as required by Section 2 of 2011 House Bill No. 1407 regarding the findings of its study of goose hunting in this state, tracking the number of resident and nonresident goose hunters, and the number of geese taken by county.

Committee members were Representatives Chuck Damschen (Chairman), Dick Anderson, Michael D. Brandenburg, Duane DeKrey, David Drovdal, Lyle Hanson, Curt Hofstad, Bob Hunskor, Scot Kelsh, Mike Nathe, David S. Rust, and Vicky Steiner and Senators Bill Bowman, Randy Burckhard, Robert Erbele, Layton Freborg, Oley Larsen, Philip M. Murphy, and Connie Triplett.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

PRIMACY STUDY

Section 5 of House Bill No. 1014 directed the study of primacy in the administration of EPA regulations. The concept of primacy is the state enforcing federal regulations through a state program. Generally, the state regulates and the federal government oversees the state regulatory program. If the state regulatory program becomes inadequate, as determined by the review by the federal agency, the federal agency assumes the regulatory program or a portion of that program. The main reason a state takes primacy in matters of regulation is for state control.

The legislative history for this study reveals the reason for this study is that primacy is not a subject matter on which much was known. House Bill No. 1014 was the appropriations bill for the Industrial Commission. The issue arose during discussion regarding agreements by the Oil and Gas Division and the State Department of Health with the EPA relating to the Safe Drinking Water Act. Of concern was the number of primacy agreements and whether the cost of primacy is worth the state having control. Also if the state has primacy, there is less of an argument that national lawsuits over environmental regulations affect state programs.

Primacy Agreements

As to primacy agreements in general, each federal environmental protection Act includes requirements that the EPA establish and enforce standards. These standards are designed to maintain or improve environmental quality and to protect public health. In some cases, implementation of federal programs may be delegated to states through formal agreements. These agreements are referred to as primacy or program delegation agreements. To receive primacy or program delegation, a state must petition the EPA expressing interest in the program implementation and must demonstrate that the state has the capacity to implement the program. The program benefits both federal and state agencies. The benefits include:

- Program implementation costs less at the state level.
- More immediate and timely response.
- Increased access to the regulatory process.
- Increased acknowledgment of local conditions.
- A more immediate say by the state into how rules are implemented.

If a state chooses not to seek primacy, the program requirements will be conducted by the EPA or its contractors. Not all EPA programs may be delegated to a state.

The following schedule provides information regarding agreements between North Dakota state agencies and the EPA for primacy in the administration of EPA regulations:

State Agency	Federal Statute	Programs
State Department of Health	Clean Air Act	Air toxins, national emission standards for hazardous air pollutants, new source performance standards, and Title V air quality permits
	Clean Water Act	Construction grants, national pollutant discharge elimination system water quality permits, and state revolving fund
	Safe Drinking Water Act	Drinking water, state revolving fund, and pretreatment
	Resource Conservation and Recovery Act	Land disposal restoration, mixed waste, solid waste, toxicity characterization, and underground storage tanks
	Toxic Substance Control Act	Asbestos and Class V underground injection control - General
Department of Agriculture	Federal Insecticide, Fungicide, and Rodenticide Act	Enforcement, worker protection safety, and pesticide certification
Industrial Commission	Safe Drinking Water Act	Class II underground injection control - Oilfield waste disposal and enhanced oil recovery wells
		Class III underground injection control - Subsurface mineral solution mining

Testimony and Discussion

The committee received testimony from the state agencies that have primacy agreements with the EPA. The committee received testimony from the State Department of Health, the Department of Agriculture, and the Industrial Commission through the Oil and Gas Division.

State Department of Health Primacy Agreements

The number of primacy agreements between the EPA and the State Department of Health may vary from time to time. At the present time, the department has primacy agreements for major programs under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. The department receives approximately $3.5 million per year of federal funds for program implementation.

The committee was informed the state and EPA relationship has been strained. The EPA would prefer a stronger federal presence while the state would like local, social, economic, and environmental conditions to play a more direct role in program decisions. The committee was informed there should be deference to the state in program implementation decisions. The department believes Congress intended the EPA to establish environmental standards but leave implementation methods up to the states.

One area of friction between the state of North Dakota and the EPA is on regional haze. In November 2010 the EPA informed the department the EPA intended to set aside the state implementation plan for regional haze and would impose a federal implementation plan.

The regional haze program addresses visibility conditions in national parks and wilderness areas. The disagreement centers on the proper manner by which to measure pollutants. The state supports monitoring actual pollutants, and the EPA supports determining the pollutants based on modeling. Under modeling, this state would not meet regional haze standards of the EPA even if there were no power plants in this state. The regional haze controversy also is about which technology to use. The state technology, which is proven, provides a 50 percent reduction in harmful gases. The technology supported by the EPA provides for a 90 percent reduction, but that technology has not been proven to work. The cost of the state technology is $50 million per facility, and the cost of the federal technology is $300 million to $400 million per plant. Regardless of the technology used, neither will make a difference as to haze.

One of the benefits of primacy is the state controls the data and gets the data first. With this data, the state is in a better position to challenge the EPA on regional haze.

Department of Agriculture Primacy Agreements

The federal Insecticide, Fungicide, and Rodenticide Act authorizes the EPA to regulate the production, distribution, sale, use, and disposal of pesticides. The EPA can delegate enforcement primacy to a state if the EPA verifies the state laws and rules have equal or greater stringency than the federal law. The EPA has determined North Dakota Century Code (NDCC) Chapters 4-35 and 19-18 are equal to or more stringent than those found in federal law. In exchange for accepting federal funds, the Department of Agriculture has agreed to implement certain pesticide programs, engage in specific activities, and conduct a minimum number of different types of inspections and investigations. The federal funds typically require an 85 percent federal/15 percent state cost-share. Several base pesticide programs are fully or partially funded through the EPA grant. These include:

- The base pesticide enforcement program;
- The worker safety and the worker protection standard;
- The pesticides in water program;
- The endangered species protection program;
- The health care initiative; and
- The integrated pest management in schools program.

The Department of Agriculture works with the EPA through a performance partnership grant because:

- The department is already performing many of the regulatory functions that the EPA would be doing if it were enforcing the law.
- The department helps ensure that any regulatory actions are fair and reasonable.
- Persons with regulatory questions or concerns can contact the department rather than out-of-state EPA staff.
- State regulators have interaction with the pesticide industry on a daily basis and have a level of understanding of the pesticide use, practices, and issues in the state that the EPA does not.

The committee was informed that working with the EPA under the primacy agreement has some challenges. There can be significant work in preparing the grant request package and quarterly and end-of-year reports. Federal funding varies from year to year which makes it difficult to develop and implement long-term, multiyear projects. In addition, the high reliance on federal funds reduces flexibility because when the EPA controls a significant portion of the pesticide budget, the EPA controls regulatory priorities. The committee was informed if there is a reduction in federal funding, the state will have to do more with less, and there may need to be more state funding.

Industrial Commission Primacy Agreements

The Industrial Commission through the Department of Mineral Resources provided testimony on primacy issues with the EPA under the Safe Drinking Water Act. There are six types of wells, and the Department of Mineral Resources is involved with Class II, Class III, and Class VI wells. Class II wells are saltwater disposal and enhanced oil recovery wells. Class III wells are subsurface mining wells. Class VI wells are for carbon dioxide sequestration.

The Industrial Commission through the Oil and Gas Division of the Department of Mineral Resources regulates Class II injection wells. These wells are

regulated under North Dakota Administrative Code (NDAC) Chapter 43-02-05. The program costs approximately $400,000 per biennium, and the EPA funds approximately one-third of the cost. In 1983 during the primacy application, the EPA indicated the Class II grants would cover approximately 75 percent of the cost. The state has 300 saltwater handling facilities presently, and 1,500 are expected in 17 years to 20 years. This number results in three disposal wells in every township. The committee was informed these facilities are not a great neighbor because they run 24 hours a day, 7 days a week with trucks dumping saltwater. Although saltwater disposal wells are regulated by the Oil and Gas Division, dust creation and safety on the highway as a result of a facility is not within the power of the division. The committee was informed that the facility and well do not need to be located next to each other--there are many options. It was urged the Legislative Assembly review the policy of facility location.

The Industrial Commission, through the Geological Survey Division of the Department of Mineral Resources, regulates Class III injection wells. These wells are regulated under NDCC Chapter 38-12 and NDAC Chapter 43-02-02.1 under a primacy agreement.

The Industrial Commission, through the Oil and Gas Division, is revising rules relating to Class VI injection wells. North Dakota Administrative Code Chapter 43-05-01, relating to geologic storage of carbon dioxide, must be amended to meet the stringency of the EPA rules and regulations. This is a requirement to qualify for Class VI primacy. Carbon capture and storage may become essential for energy development in this state, especially for coal. The technology is used and is available; however, there are problems with public acceptance. North Dakota Century Code Chapter 38-22 authorizes the Industrial Commission to set a fee for the trust fund and administration fee for carbon dioxide storage. Carbon dioxide sequestration is funded with a one cent per ton fee for administration and a five cent per ton fee for a trust fund to oversee the wells once they are closed down. In 2011 the Legislative Assembly appropriated $532,000 to the administrative fund. The state adopted rules on carbon dioxide sequestration before the EPA adopted rules that are different from the state rules. Environmental Protection Agency Region 8 compared the state rules to the federal rules and found 200 pages of differences. The Oil and Gas Division is in the act of reconciling the state rules with the federal rules so the state may enter a primacy agreement.

Wyoming and Montana took the stance of not entering primacy agreements but later recanted. The problem was that industry could not get permits in a timely manner from the EPA. Permits from the EPA would take over a year, while permits can be received in this state within six weeks.

The committee was informed the EPA regulates more frequently from suggestions made by a scientific advisory board consisting of members from academia. Because academia fears interacting with industry will remove its independent role, the result is regulation that is not practical or implementable.

It was argued the Legislative Assembly should be aggressive with informing the public and Congress of the state's position. For example, the ozone rule was tabled because the general public was informed that lots of jobs would be lost. It was urged this persistence continue for sequestration wells, because if the EPA were to regulate Class VI carbon sequestration wells, there will be no carbon storage in this state.

Committee members discussed the need of this study if maintaining primacy is priceless. To the contrary, it was argued the study could be informational and could be used to influence regulation in a positive way. One way to positively influence regulation is for consumers to be informed of the impact of regulation on the cost of anything purchased by consumers, including gas, groceries, and utility prices.

The committee discussed the scope of the study. It was argued sharing information with consumers is different from a study of primacy. The main issue was whether the committee should decide whether to return regulation to the EPA or keep primacy after weighing the benefits and costs of each.

Committee discussion included that part of the study is learning what the agencies' experiences are with the EPA. Committee discussion included the committee should look at EPA regulations to see if the regulations are burdensome or duplicative of state regulations.

The Application of EPA Regulation in This State

Primacy refers to primacy agreements. However, in some quarters, primacy is thought to refer to supremacy of federal regulation and this state's response. In matters of environmental regulation, the federal government can impose regulations on this state or let this state regulate an area. Most of the arguments with the EPA result when Congress has left an issue to the state, and the EPA does something contrary to congressional action or inaction.

The committee received testimony on lawsuits brought or participated in by this state. The committee was informed that North Dakota is a party to three separate lawsuits challenging the EPA's greenhouse gas regulatory scheme. The state is party to a lawsuit challenging the method of implementing sulfur dioxide standards. The state recently won a lawsuit against EPA regarding Minnkota Power Cooperative's best available control technology for nitrous oxide emissions. The state is suing the EPA regarding regional haze and the state implementation plan. In addition, the state has filed amicus briefs in a number of cases or has joined amicus briefs.

The committee was informed by a representative of the State Department of Health of some of the issues in maintaining a working relationship with the EPA. The committee was informed that as newer employees are hired by the EPA, there is a lack of local knowledge and trust. The committee was informed the EPA has flexibility in some areas and needs to allow that flexibility when required by the location. Most of the contact with the EPA is through telephone calls, and it is difficult to get officials to travel to North Dakota. The committee was informed the Agriculture Commissioner hosted the

Administrator for Region 8 of the EPA and the event was worthwhile and especially worthwhile for the staff who accompanied the Administrator. The Department of Agriculture has staff members in working groups with the EPA so that relationships are developed. Otherwise, the department is trying to encourage other EPA officials to travel to North Dakota.

The committee was informed the EPA wants every state to do the same thing. It was argued the end outcome should be the same; however, different paths should be allowed to reach that outcome. The industry should be allowed the opportunity to reach the end point using the process that works best. The committee was informed this state uses science and the law to make decisions.

The committee was informed the EPA signs consent agreements after being sued which require states to take specific actions. The states, however, do not have a voice in drafting the agreements. It was argued there should be federal legislation the EPA cannot sign a consent agreement without state approval or approval of involved parties.

The committee received testimony from the Department of Agriculture on the federal spill prevention, control, and countermeasure rule. The rule requires farmers with more than 1,320 gallons of on-farm oil and fuel storage and a reasonable expectation of oil discharge into a waterway to create a plan. The committee was informed the EPA has not provided consistent advice as to what is reasonable.

The committee received testimony on rules related to sulfur dioxide, mercury, regional haze, carbon dioxide emissions, coal combustion residuals, stream protection, and the jurisdiction of the EPA under the Clean Water Act. As to the economic impact of EPA rules, the Midwest independent system operator (MISO) has conducted an analysis--100 requests of retirements of plants have been made due to rules. A total of 60,000 megawatts--half of the energy in the MISO system--will be affected by rules. There will need to be retrofits for 47,000 megawatts which will cost between $150,000 and $450,000 per megawatt.

To avoid litigation and have a clear environmental policy, this state needs to communicate with other states and Congress on environmental issues. It was argued the problem with the expectations for environmental regulation comes from other areas of the country. It was urged that this state communicate with Canada, especially Saskatchewan, through legislative groups as well as by the Governor.

Committee discussion noted this state supplies energy through natural gas, oil, wind, coal, and hydroelectricity, and this activity provides jobs. It was argued businesses need to remain viable while environmental problems are realistically addressed.

Conclusion

The committee makes no recommendation regarding the study of primacy.

POTASH MINING AND TAXATION STUDY

Section 5 of House Bill No. 1046 directed the study of potash mining and taxation issues.

House Bill No. 1046 creates a taxation structure for the mining of potash and potash byproducts. In addition, Section 4 of the bill states it is legislative intent that during the 2013-15 biennium, $2 million be made available to loans to potash development-impacted political subdivisions to be repaid from future proceeds of tax allocations under the potash and byproducts mining taxation. Under NDCC Section 57-65-07, as created by Section 2 of the bill, the new tax is appropriated and must be apportioned as determined by the 63rd Legislative Assembly.

Legislative History of Study

House Bill No. 1046 was recommended by the 2009-10 interim Taxation Committee. That committee received information from representatives of business entities that were in the initial stages of establishing mining operations in North Dakota for potash and uranium. 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. After review of issues concerning taxation of these operations, the committee recommended House Bill No. 1046.

House Bill No. 1046, as passed, established a tax of 2 percent of the sales price of potash and a tax of 4 percent of the gross value of potash byproducts extracted in the state. Potash mining was not expected to occur before 2013, and therefore an allocation formula could be established in 2013. The bill provided the land and process plant, mining facility, or satellite facility is to be assessed and taxed by local taxing authorities.

The legislative history of House Bill No. 1046 reveals four major concerns:

1. The allocation of tax revenue to the state and political subdivisions and the distributions of allocations within the entity receiving the allocation.
2. Impact funding to address development-related impacts before there are sufficient revenues from taxation.
3. Taxation of potash and potash byproducts at a level to balance desire not to tax at a level so high that prohibits mining or so low that impacts are not addressed.
4. Regulation of mining so as to promote safety and to protect the environment, especially ground water.

Allocation and Impact

The allocation among the state and political subdivisions and the distribution within the state and a particular subdivision were major issues described in the legislative history. The bill as introduced allocated 80 percent to the state to reduce individual income tax rates and 20 percent to counties that produce potash and potash byproducts in the proportion that the taxes on potash and byproducts removed in the county were to the total taxes.

As amended by the House Finance and Taxation Committee, the bill provided the first $1 million in taxes from production within each spacing unit must be allocated to the county or counties within the spacing unit for deposit in county road and bridge funds. After the $1 million allocation, in the first year 60 percent was to be allocated to the producing county and 40 percent to the state general fund. In the year following, 50 percent was to be allocated to the producing county and 50 percent to the state general fund. In the following year, 40 percent was to be allocated to the producing county and 60 percent to the state general fund. In the following years, 30 percent was to be allocated to the producing county and 70 percent to the state general fund. As for the distribution for the state, before money was to be placed in the state general fund, 30 percent was to be deposited into the legacy fund. As for the distribution to the county, 10 percent was to be deposited into a special potash impact grant fund for the county after the first $1 million is allocated. Amounts deposited into the county potash impact grant fund would have been allocated through grants through the board of county commissioners to or for the benefit of the county, township, or cities within the county.

As reported by the Senate Finance and Taxation Committee, the allocation was for the first $1 million in taxes from each mining permit area, instead of a spacing unit, to be allocated to the county or counties within the mining permit area, for deposit in the county general fund. After the $1 million allocation, the producing county was to be allocated 10 percent, and the state was allocated 90 percent for deposit in the general fund. However, 5 percent of county allocations was to be retained by the State Treasurer and deposited in the state general fund until a total of $2 million had been deposited in the state general fund. As for impact funding, a direct appropriation of $2 million was appropriated to the Energy Development Impact Office for the purpose of impact grant funding for potash development-impacted political subdivisions. These grants were triggered by a building permit being issued for a potash processing plant in this state.

As reported by the Senate Appropriations Committee, instead of an appropriation of $2 million, the bill provided for legislative intent that the 63rd Legislative Assembly appropriate $2 million to the Energy Development Impact Office for the purpose of impact grant funding for potash development-impacted political subdivisions.

As enacted, the bill provided that taxes collected on potash and potash byproducts are appropriated and must be apportioned as determined by the 63rd Legislative Assembly. In addition, the bill contained legislative intent for $2 million for loans, not grants, to potash development-impacted political subdivisions to be repaid from the future proceeds of tax allocations from potash and byproduct taxes.

Taxation

There are basically three taxes that were considered for imposition on potash:

1. A tax on the potash.
2. A tax on the byproducts.
3. A property tax on facilities and land.

As introduced, House Bill No. 1046 imposed a 4 percent tax on the whole production of potash. The tax on byproducts was 4 percent of the gross value of all subsurface mineral byproducts sold. As passed by the Senate, the bill provided for a tax rate of 1.5 percent on potash and 4 percent on byproducts. As enacted, the bill provided for a tax rate at 2 percent for potash and 4 percent for byproducts.

As rates changed so did the application of property tax. As introduced, the bill provided the payment of the potash and byproducts tax is in lieu of all ad valorem taxes upon any processing plant, mining facility, or satellite facility producing potash or byproducts. The land on which the processing plant, mining facility, or satellite facility is located would continue to be assessed and taxed as other property within the taxing district in which the property is situated. As passed by the House, the bill provided the payment of potash and byproduct tax was in lieu of all ad valorem tax by any governmental entity on any property rights inherent in producing potash, on leases, on machinery, and on investment property. This did not include the land on which the plant or facility was located and the plant or facility, so the land and plant or facility was taxed as real property. In addition to the tax on land and the plant or facility, income tax was allowed, but the bill removed the excise tax on the sale of potash and byproducts at retail from being an allowable tax. As passed by the Senate, and enacted, the bill placed the processing plant, mining facility, or satellite facility and any associated pipelines on the list of exemptions from ad valorem tax.

Regulation

The Department of Mineral Resources has jurisdiction over subsurface mineral extraction under NDCC Chapter 38-12 and NDAC Chapter 43-02-02 as it relates to subsurface mineral exploration and development and NDAC Chapter 43-02-02.1 as it relates to underground injection control that includes solution mining for potash. As part of the statutory authority, the commission may require the furnishing of bonds; the delivery of exploration data; the filing of monthly production reports; the conducting of all exploration, development, and production operations to prevent pollution of freshwater supplies, provide for the protection of the environment and public safety, and to ensure the optimum recovery of the mineral resource; and the reclamation of all land disturbed. The commission acting through the Director of Mineral Resources may regulate the drilling and abandonment of exploration test holes and producing wells; promulgate and enforce rules, regulations, and orders; and inspect all exploration, development, and production sites.

Testimony and Discussion

Regulation

Subsurface mineral extraction wells are Class III injection wells used for potash solution mining. The Geological Survey has the authority to regulate subsurface mineral exploration, development, and production under NDCC Chapter 38-12 and NDAC

Chapter 43-02-02. The state has program implementation primacy over Class III injection wells from the EPA.

In 2011 the Legislative Assembly authorized one full-time geologist position to supervise the subsurface mineral program. The committee was informed the new geologist will need to modernize NDAC Chapters 43-02-02 and 43-02-02.1, which were last updated in the mid-1980s. Companies were concerned with the rules because they were vague and combined solution mining and surface mining in the same language. The rewrite of the rules will consider the present North Dakota, Michigan, Wyoming, New Mexico, and Utah laws.

The committee was informed that bond for a recent exploration well was $50,000, and the rewrite also will consider a sliding scale for a bond, which will need to be enough to plug the wells and remove the buildings.

Review of Mines and Mining Process

The committee received testimony on potash plants in this and other countries. The committee reviewed the mines in Saskatoon, Saskatchewan; Belle Plain, Saskatchewan; Hershey, Michigan; Wendover, Utah; Moab, Utah; Carlsbad, New Mexico; and the Dead Sea, Israel. The committee was informed that a modern mine is the Mosaic Potash Plant in Hershey, Michigan, and the plant is the closest in type of plant in the United States to a plant that would be in North Dakota. Although no new mine has been created in 40 years, no mines have closed and most are trying to expand.

Interest in potash mining in North Dakota arose because of the advancement of drilling techniques. It is now possible to go deeper and horizontally drill for potash. Within the last 10 years it has become feasible to drill down 12,000 feet. Potash in this state ranges from about 6,000 feet to 12,000 feet deep and generally is 8,200 feet to 8,600 feet deep. Potash is located below the Bakken and Three Forks Formations. As the formations move south and west, potash formations move deeper--to 12,000-feet plus. The potash zone is shallower as it moves to the east but is thinner. The economics of potash wells are depth-dependent. Saskatchewan potash is shallower--in the 3,500-foot to 5,000-foot level. Potash exploration does not have the impact of oil exploration. One well can go in multiple directions for a mile around the well site. The committee was informed that there is a high impact on a small area.

Most of the royalties in North Dakota are subject to private lease agreements. In North Dakota 16,000 acres are leased mostly with private individuals. There are some state leases, and most of the leasing on state land was done through an Internet auction.

The committee received information on how long mining would last. The Hershey mine has lasted approximately 20 years and is nearing the end of the deposit. The Belle Plaine mine has run for 50 years and expects to run for another 50 years. A mine in North Dakota is expected to run 30 years to 70 years. There is an estimated 50 billion tons of potash in North Dakota. The plant would expect to process between 500,000 tons to 2,000,000 tons per year.

There are three main minerals that would come from potash mining in this state--potash, magnesium, and sodium chloride. Potash is mined through solution mining in which potassium chloride and sodium chloride are dissolved in water. It is expected that oilfield brine will be injected to dissolve the potassium chloride, and 97 percent of the water will be recycled. The water is heated and the potassium chloride or potash separates while the salts stay in the water. Sodium chloride is returned 2 to 1 or 3 to 1 as to the potash and is an issue that needs to be addressed.

The committee was informed the main byproduct is sodium chloride which is used for road salt, cattle salt, and table salt. In Canada these uses make up one-half of 1 percent of the salt. In Canada it has been found not to be feasible to return salt back to the cavern from which the salt came. The Saskatchewan plant has a salt pile and brine ponds. A salt pile can be a serious problem with surrounding farmers. It was argued the business entity involved with potash in this state does not know how it will handle the salt, and if a plant is started without a plan for the salt, it will be too late. The Division of Mineral Resources stated there will not be a salt pile, and it is expected the sodium chloride will be left in the ground.

The committee received testimony on what would happen to the potash after it was processed. Ninety-five percent of potash goes to a fertilizer company and is mixed with phosphorus and nitrogen. The majority of potash will be shipped by rail within the United States. There most likely will be a spur built to the plant, and the potash will be shipped in crystallized pellet form. Next, the potash would be shipped to Asia and mixed with nitrates and phosphates to make fertilizer. There is high demand for potash in India and China. Rice farming uses the most potash, and the soil in China needs potash. Farmers in this country use almost no potash because of the soil content and crops produced. The United States uses 6.6 million tons of potash and imports 5.5 million tons. Although there is demand domestically for potash, it may not provide the highest price. The price of potash is tied to the price of commodities, population growth, biofuel, land availability in foreign countries, and diets. These factors point to a significant demand increase in potash over the next decade. The committee was informed there is not a good chance that a company would construct a fertilizer processing plant in this state. Historically, plants are built near the source of the use of the fertilizer.

The committee was informed the cavern left by potash mining could not be used for compressed air storage for wind turbines. This is a concept in which the power from wind turbines is used to compress air that is stored underground. The compressed air generates electricity when it is needed at a later time. The main issue is that compressed air storage caverns have to be less than 6,500 feet deep, and this is shallower than most of the potash in this state.

The committee received testimony on concerns with potash mining and taxation. The concerns include:

1. Reclamation bond for production and processing facilities.

2. Zoning and siting for production and processing facilities--local zoning is preferred.
3. Spacing units on wells.
4. Taxation model.
5. Use of the point-of-sale method of taxation versus the use of production taxation.
6. Allocation of 100 percent of the first $1 million of tax revenue to the county and a step-down to an allocation of no less than 30 percent local and no more than 70 percent state should be adopted, instead of the ability to tax property.
7. Distribution of tax proceeds in a manner consistent with the Municipal Tax Sharing Act in Saskatchewan which distributes taxes on potash mines with eligible rural and urban municipalities within a 20-mile radius of a potash mine shaft and headframe.
8. Use and availability of water.
9. Disposal and storage of salt.
10. Safety of well field piping containing saltwater--a break in the pipeline could be disastrous.
11. Infrastructure for the 1,500 jobs for construction and probable labor force of 79 salaried and 193 hourly paid personnel. The committee was informed that a potash facility provides long-term full-time positions.

The committee was informed that many of these concerns have arisen because the potash companies have not provided enough communication, the local governments do not have enough expertise, and there needs to be more communication from the Industrial Commission as well.

Eby Test Well

The committee received testimony on the Eby test well. State data was used for siting the exploratory well. The information gained from the exploratory well was published publicly in August 2012. The results showed different mineralization than expected.

The purpose of potash mining is to remove potassium chloride. Carnallite is found bound with potassium chloride, and potash mining companies try to avoid carnallite. The industry norm is to prefer less than 6 percent carnallite. Canadian literature shows a preference by mining companies of having potassium chloride at least 12 feet thick and in a weighted percentage of 20 to 25 percent. The weighted percentage for an area exceeding 12 feet at the Eby well is 18 percent. The Eby well has six layers totaling 18 feet. The Helming well, which was drilled previously in Bottineau County, has higher potassium chloride--in a 12.5-foot layer there is 21 percent potassium chloride--and much lower carnallite.

The committee was informed that if the Eby well would have had better results, there would have been a more immediate response by investment companies. The business entity showing the most interest in mining potash in this state is focusing on a project in England. The England potash facility will produce more potash than a North Dakota facility. The layers in the North Dakota formation are deep, and the England potash is 5,000 feet deep, which is less costly to mine.

This has pushed the timeline for potash development in this state back a few years. Potash mining is at a minimum of three years to four years away, but the potential for a longer period of time may be more accurate. The consensus on estimates for impact was that it would be more than five years for development. The industry standard is for five years to pass from exploration to impact, and there usually is seven years to eight years. The actual timeline for North Dakota depends on the next studies.

Taxation

In comparing this state to other states with potash mining, it was difficult to compare taxation rates because the type and amount of mining and the entire tax structure varies from state to state. For example, Michigan and Utah have no severance tax but have a higher royalty rate because the potash is on state land. The tax rates combined with royalty rates equal 4 to 5 percent. Saskatchewan has a complicated taxation scheme to adjust for a high or low value for potash.

The business entity involved with potash in this state supported this state's taxation as a middle-of-the-road proposal that is a good starting point. Most importantly, a taxation structure needed to be developed so there was an economic model for the business entity to determine whether it is viable to mine potash.

The committee received testimony from the Tax Department on potential tax revenue with potash processing. The committee was informed that under the current law, if a one million ton potash processing facility were operated today at full capacity and selling the product for $400 per ton, at a 2 percent tax rate, the facility would generate $8 million in taxes annually. This does not take into account any taxes generated from the sale of byproducts. The average consolidated Burke County mill rate is approximately 210 mills. If this were applied to potash production commercial property assessed at a market value of $100 million, it would produce an annual tax revenue stream of approximately $1,050,000 for the county and other political subdivisions.

Impact

The area with the best potential for potash mining is Burke County. The county has a small population, is not wealthy, and any impact from potash mining needs to be met. The impact of oil and potash development at the same time in Burke County could be quite great.

Committee discussion was to the effect that apportionment of taxes should be tied to the impact. Because most of the money goes to the state, the state will have to address impact. The logical manner to determine taxation and allocation is to figure out what will be the impact of the plant. The committee was informed there needs to be an analysis of whether the revenue stream will be large enough to handle the impact. However, impact funds need to arrive at the beginning of potash development when there is little tax revenue. Any impact funding needs flexibility to provide appropriate funding to counties and political subdivisions because the impact will not be known until mining starts.

Discussion included that impact funding should be broader than potash so that funding addresses the development of uranium or lesser-known minerals.

The consensus of the committee is the impact of potash mining needs to be addressed, but there needs to be more information to determine the impact. It was argued that waiting for more information is generally a good idea. Assuming there will be no impact until after the 2015 legislative session, there is time for the Legislative Assembly to craft legislation based on the best information. The committee was informed by the business entity involved with potash in this state that once the business entity completes studies, does more exploration, and proves out the resource, there will be good information on the impact. However, the business entity has stayed out of local tax issues because it does not want to take sides among local residents. As such, allocation is not a business issue but is a political issue for the state to decide.

Conclusion

The committee makes no recommendation regarding the study of potash mining and taxation. Potash development appears to be further away than once expected. As such, more time may be given to developing the appropriate policy.

FEDERAL DESIGNATIONS STUDY

Section 1 of Senate Bill No. 2234 directed the study of various mechanisms for improving coordination and consultation regarding federal designation over land and water resources in this state.

Legislative History of Study

As introduced, Senate Bill No. 2234 would have prohibited the federal government from establishing a federal designation over land or water resources in this state without the approval of the Legislative Assembly by concurrent resolution. The bill's proponents included the North Dakota Stockmen's Association, the North Dakota Farm Bureau, the Landowners Association of North Dakota, and certain landowners. The proponents argued federal designations diminish property rights and are the first step in further regulation. Proponents provided a list of federal designations to which the bill should apply:

- National forests;
- National parks;
- Wilderness areas;
- Roadless areas;
- Wild, scenic, and recreational rivers;
- National monuments;
- National conservation areas;
- National recreation areas;
- National heritage areas;
- Scenic byways;
- National wildlife refuges;
- Wilderness study areas;
- Municipal watersheds;
- Conservation easements;
- Grasslands;
- Wetlands; and
- Prairie potholes.

The proponents listed the Dakota Grasslands Conservation Area as the latest example of a federal designation. This is a designation in which the United States Fish and Wildlife Service seeks to conserve 12 million acres in South Dakota, North Dakota, and Montana. This program was proposed by the United States Fish and Wildlife Service for conservation of grasslands through the purchase of conservation easements.

The State Department of Health expressed concern with the bill as introduced. The concern was over which federal designations would require approval. Some designations are made through determinations. For example, there are determinations in which the federal government designates whether the state program is in compliance with federal regulation. The concern was if state legislative approval were required, the approval may not be able to be given before the federal government would take over the state program due to the delay resulting from the Legislative Assembly meeting only biennially.

The opponents to the bill as introduced pointed out the Supremacy Clause of the United States Constitution basically states that federal law preempts state law. If a state adds a requirement that the federal government needs approval to implement federal law in this state, that law is contrary to the Supremacy Clause and is preempted. These opponents cited an Attorney General Letter Opinion--2011-L-01--which opined that it is likely 2011 House Bill No. 1286 would be preempted by federal law. The opinion summarized House Bill No. 1286 as making it a crime for federal or state employees to apply federal law, including federal regulations and rules, when determining a North Dakota resident's right of access to medical services and health insurance coverage, unless the federal government had received approval from the Legislative Assembly. In a footnote of the opinion, the Attorney General identified two other bills that raised similar concerns--one of which was Senate Bill No. 2234.

State Law

The following are instances in which the state, by state law, has control or cooperation over the acquisition of land by the federal government and other entities. These instances arise because federal law allows state involvement.

North Dakota Century Code Section 10-06.1-10 provides that a nonprofit organization may not acquire farmland or ranchland unless, among other things, the Governor approves of the proposed acquisition. The nonprofit organization must notify the Agriculture Commissioner, who convenes an advisory committee consisting of members from or of:

- The Parks and Recreation Department;
- The Agriculture Commissioner;
- The State Forester;
- The Game and Fish Department;
- The North Dakota Farmers Union;
- The North Dakota Farm Bureau;

- The Stockmen's Association; and
- Affected board of county commissioners.

The advisory committee has a meeting with the board of county commissioners and makes a recommendation to the Governor.

Under NDCC Section 20.1-02-17.1, the Director of the Game and Fish Department is required to submit proposed wildlife and fish restoration programs or projects involving the acquisition of wetlands, water, or land to the board of county commissioners in affected counties for approval before agreement with and approval by the Secretary of the Interior. The board of county commissioners must inspect the property, hold a public hearing, and give an approval or disapproval. The Game and Fish Department and county agent must provide the board a detailed impact analysis. The Department of Commerce must circulate the analysis within state government for comment and forward the comment to the Game and Fish Department.

Under NDCC Section 20.1-02-18, the Governor's approval is required for the acquiring of land by the federal government under the Migratory Bird Conservation Act. Under NDCC Section 20.1-02-18.1, the Governor and the Director of the Game and Fish Department must submit the proposed acquisition of land waterfowl production areas, wildlife refuges, or other wildlife purposes to the board of county commissioners of the affected counties. The board must give notice and have a public hearing. A detailed impact analysis from the federal agency involved must be given to the board. In addition, the county agent of the affected counties must prepare an impact analysis, and these documents must be given to the Department of Commerce to circulate within state government. The department must forward the analysis and comments to the federal agency and state decisionmakers.

Under NDCC Section 54-01-15, the federal government may acquire land for national forests with the consent of the Legislative Assembly. The legislative consent is required in the form of a bill.

Under NDCC Section 55-10-10, this state recognizes the National Historic Preservation Act. The State Historical Society is the state entity that carries out the program. The State Historical Society may acquire title or interest in any district, site, building, structure, or object in compliance with federal law.

Northern Plains National Heritage Area

One area of contention in recent history regards the Northern Plains National Heritage Area. Congress authorized the program in 2009. The Northern Plains National Heritage Area encompasses approximately 800 square miles of land along both sides of the Missouri River in five counties from Huff to Stanton. The counties include Burleigh, McLean, Mercer, Morton, and Oliver. The purpose of the Northern Plains National Heritage Area is to preserve history in an area of distinct human impact on the landscape. The program provides matching grants for tourism within the area.

The Northern Plains Heritage Foundation is the nonprofit organization that functions as the coordinating entity for the Northern Plains National Heritage Area. The foundation was charged with writing a management plan for the heritage area. The management plan must identify ways in which the federal funds will be matched, as well as the guidelines the foundation will follow when awarding grants, and anything else determined important to the successful management of the heritage area. The management plan has been made and applications for grants have been received by the foundation.

The main concern by landowners was they did not have notice of the potential designation. When notified of the designation, many landowners expressed concern that the program would threaten private property rights. In response to these concerns, the law authorizing the program provided for an opt-in provision for landowners.

The first sentence of NDCC Section 54-01-28, which was enacted in 2011, states that state funds may not be expended or transferred from state agencies to match federal money for the Northern Plains National Heritage Area or any similar or successor designated area without the approval of the Legislative Assembly. The expenditure or transfer of state funds to match money for the heritage area is within the purview of the Legislative Assembly, and does not violate the Supremacy Clause.

The federal Omnibus Public Land Management Act of 2009 prohibits the foundation from using any federal funds to acquire any interest in real property. The Act was amended to prohibit the inclusion of private property in the heritage area unless the private property owner requests inclusion. In addition, a private property owner already in the heritage area may be removed from the heritage area upon request. As a consequence of this law, a private property owner has to request inclusion in the heritage area. As for state or local government, proper notice to the Northern Plains Heritage Foundation removes that property from the heritage area.

The second sentence of NDCC Section 54-01-28 states that state lands, water, property, or facilities may not be included in the designated Northern Plains National Heritage Area or any similar or successor areas without the approval of the Legislative Assembly. The third sentence states that no further lands, water, property, or facilities may be designated as heritage areas within this state without the approval of the Legislative Assembly. Although stated in the converse, these sentences would appear to opt state property out of the heritage area, and legislative approval would be needed to opt back in. Although Section 54-01-28 appears to take action for the state, to be absolutely clear, the executive branch or Legislative Assembly may desire to clearly opt-out, if that is the intent.

The third sentence of NDCC Section 54-01-28 in part appears to address private property that may be included in the heritage area in the future. Legislative Assembly approval is required. This would be legislative regulation of a relationship between a private landowner and the federal government. This provision may raise constitutional issues under the Supremacy Clause because the Omnibus Public Land Management Act of 2009 provides the private property owner may request inclusion in the heritage area.

Testimony and Discussion

The federal designations study focused on the Northern Plains National Heritage Area. The committee received testimony on the Northern Plains Heritage Area. There are 49 national heritage areas, and each has a theme. In this state, a feasibility study was conducted by Ms. Amy Mosset from the Three Affiliated Tribes. The feasibility study developed the themes of the home of the Mandan and Hidatsa Indians--a focus on Lewis and Clark and Sakakawea and a focus on George Custer and Sitting Bull. Letters of support were received from the counties involved as part of the feasibility study. There was no opposition at that time. The Northern Plains National Heritage Area was approved by Congress in 2009.

After the feasibility study, the foundation developed a management plan that was sent to the Secretary of the Interior in March 2012. As part of the management plan, there were to be meetings in each of the five counties involved in the area.

In addition, after the feasibility study and before the management plan, there was a pilot grant program, and 13 organizations sent in applications and 9 were recommended for funding. The funding available was $150,000. There was a perception of a conflict of interest because members of the grant committee were involved in the organizations that received grants. However, there was no financial interest by the volunteer board members. The National Park Service was asked to cancel those grants with the appearance of a conflict of interest, but the National Park Service stopped the grants and required the grant process to restart.

The committee received testimony that NDCC Section 54-01-28 does not prohibit the Fort Abraham Lincoln Foundation from matching Northern Plains Heritage Foundation grants for interpretative panels for the earth lodges at Fort Lincoln. It was argued the law does not completely restrict the Northern Plains Heritage Foundation money to be used on state property. It was argued there were federal Supremacy Clause issues with the law.

Because of the Supremacy Clause of the United States Constitution, it is difficult for the state to require any coordination or consultation by the federal government in making any designations. A great majority of designations either involve the state or an Act of Congress as to the particular property. As such, the political process provides the coordination and consultation that is the focus of the study. However, some entities argue the Supremacy Clause is limited by the 10th Amendment, which provides that powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states or to the people.

The committee was informed by a representative of the Northern Plains Heritage Foundation that the foundation provides grants and does not manage land. Also, the foundation has no regulatory impact on property or property owners.

The committee was informed the volunteer labor of the board of directors can be used as part of the match. Approximately $440,000 has been appropriated for grants, and $47,000 has been expended on management. The next grant round will be for approximately $300,000, and there is more than enough match available. Heritage areas are designed to be operated by a local nonprofit for a period of 15 years and after that time to be self-sustainable. Other states with heritage areas have gone back after the 15 years for additional funds; however, the foundation in this state anticipates completion in 15 years.

The committee was informed there was opposition to the Northern Plains National Heritage Area because of concerns with future regulation of viewshed and with a concern on fiscal responsibility of spending money on these types of grants. Another concern is the Division of Tourism will give grants to private entities and these funds are commingled with other funds and then used for match. In short, state money ends up being used as a match. However, the committee was informed the Division of Tourism has detailed grant agreements, and those entities receiving grants must report on spending, and spending is well-documented.

Besides the Northern Plains National Heritage Area, the committee received testimony on the Dakota Grasslands Conservation Area, Wild and Scenic River designations, the Crown Jewels Program, and National Grasslands.

The Dakota Grasslands Conservation Area identified purchasing perpetual easements on 24,000 acres of wetlands and 1.7 million acres of grasslands for migratory bird habitat at the cost of $588 million over 25 years. Because the United States Fish and Wildlife Service does not have the financial resources, the service will have to use alternative funding sources, such as the land and water conservation fund. These fund grants are awarded to states and other entities to support the acquisition and development of parks, recreational facilities, and habitat. It was argued North Dakota state grants should not be used to purchase these federal perpetual easements, and the easements should be for 20 years or one generation.

The committee was informed of concerns that the Little Missouri River in the Badlands will be designated a wild and scenic river, and the Crown Jewels Program will create permanent protection from development of certain lands. In addition, the committee was informed the National Grasslands is composed of federal land, but private property is commingled, and roadless areas in the National Grasslands restrict private property owners in use of their property.

In general, proponents of the study informed the committee that farmers and ranchers are frustrated with the federal government, and they want to have control of the land. In addition, it was argued the state should keep state-owned land from being in national designations.

Committee members discussed whether perpetual easements devalue the land. Also discussed was whether wetland easements cause flooding because water cannot be drained in the fall.

Committee members discussed the action by which the United States Fish and Wildlife Service stretches an easement by claiming water under a wetland is part of

the easement. The service is using this logic to regulate wells. These easements have created hard feelings between landowners and federal agencies because agencies have taken control of land through legal action. It appeared to the committee emotions run high in the issue of property rights and the federal government.

Conclusion

The committee makes no recommendation regarding the study of federal designations.

REPORT ON GOOSE HUNTING AND RESIDENT AND NONRESIDENT GOOSE HUNTERS

The committee received the report by the Game and Fish Department on the findings of its study of goose hunting in this state, tracking the number of resident and nonresident goose hunters, and the number of geese taken by county. The department provided information on the annual goose harvest numbers, the number of waterfowl hunters, the seasonal Canada goose bag per waterfowl hunter, the hunters and harvest of early season Canada geese, Canada goose kill permits, and Canada goose population indices.

The early Canada goose season is open to resident and nonresident hunters. However, state law limits nonresidents to 14 days of waterfowl hunting. In 2003 legislation was enacted which allows nonresidents to hunt the early Canada goose season in Richland and Sargent Counties without those days counting against the 14-day limit. In 2011 the Legislative Assembly added Benson, Ramsey, and Towner Counties to the 14-day limit exclusion.

The committee received testimony on the effect of not counting against the 14 days allowed for nonresidents the days spent hunting the early Canada goose season in Richland, Sargent, Benson, Ramsey, and Towner Counties from the Game and Fish Department. The committee was informed it was difficult to assess the success of limiting the nonresident hunter day restrictions from Ramsey, Benson, and Towner Counties based on a single year of data. A larger sample of nonresident hunters is needed to provide valid information. This information could be obtained with a special license that would provide a more targeted sample, much like the spring snow goose nonresident license.

The department supports expanding the exemption from the 14 days for nonresidents to other counties or statewide with the understanding that some resident hunters would not support expanding opportunities for nonresident hunters.

The committee was informed of methods and tools to avoid depredation. Depredation kill permits allow the producer to kill up to 30 geese per season per permit, and permits are easily obtained after the previous one is filled. In addition, the Game and Fish Department provides snowfence stops, propane cannons, coyote decoys, solar scarecrows, food plots, and buffer strips to address goose depredation. The department has constructed 21,000 miles of electric fence and provided 348 propane cannons, 39 fences, and 661 flags.

The committee was informed bag limit increases have a positive result, but not on a 1-to-1 basis. For example, the bag limit was increased to 15 birds a day for the August hunt, and the committee was informed people will take advantage of the larger bag limit this year, but interest in the limit will wane over the years, and fewer geese will be harvested. It was argued the best way to control goose numbers and depredation is through hunters and access, and it can be difficult for hunters to obtain access when landowners are difficult to find.

PROPERTY TAX MEASURE REVIEW COMMITTEE

The Property Tax Measure Review Committee was assigned the responsibility of studying the potential effects of initiated measure No. 2 appearing on the primary election ballot on June 12, 2012, to prohibit imposition of property taxes.

Committee members were Representatives David Drovdal (Chairman), Larry Bellew, Wesley R. Belter, Tracy Boe, Chuck Damschen, Glen Froseth, Joyce Kingsbury, Kim Koppelman, Ralph Metcalf, Dan Ruby, Clark Williams, Lonny B. Winrich, and Steven L. Zaiser and Senators Dwight Cook, Joe Miller, Carolyn C. Nelson, Dave Oehlke, and Ronald Sorvaag.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

STUDY OF THE POTENTIAL EFFECTS OF INITIATED MEASURE NO. 2

Background

Summary of Initiated Measure

Initiated measure No. 2 would amend Sections 1, 4, 14, 15, and 16 and repeal Sections 5, 6, 7, 9, and 10 of Article X of the Constitution of North Dakota to eliminate property taxes, poll taxes, and acreage taxes, effective January 1, 2012. The measure would require the Legislative Assembly to develop a formula to replace the lost property tax revenue with allocations to political subdivisions from state-level revenues.

Related Legislation

North Dakota Century Code Section 16.1-01-17 provides that at least 90 days prior to the statewide election at which an initiated measure will be voted upon, the Legislative Council is to coordinate the determination of the estimated fiscal impact of the initiated measure. The Legislative Management is to hold hearings, receive public testimony, and gather information from agencies and institutions relating to the estimated fiscal impact of the initiated measure. At least 30 days prior to the election, the Legislative Council is to provide information regarding the estimated fiscal impact to the Secretary of State, who shall include a notice within the analysis of the initiated measure specifying where copies of the statement of the estimated fiscal impact of the initiated measure can be obtained.

Section 16.1-10-02(1) provides that no person may use any property belonging to or leased by the state or any state agency or any service which is provided by the state or a state agency or political subdivision for any political purpose. The definition of political purpose included in Section 16.1-10-02(2) was amended by the Legislative Assembly in 2011 Senate Bill No. 2327 to include a statewide initiated or referred measure, a constitutional amendment or measure, and a political subdivision ballot measure. The Legislative Assembly in 2011 also amended subsection 2 to provide that "[f]actual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question."

Property Tax

Property tax is assessed on the value of all real property unless the property is specifically exempted. Except for a one-mill levy for the University of North Dakota School of Medicine and Health Sciences, property taxes are determined, levied, collected, and expended at the local level for support of schools, counties, cities, townships, and other local political subdivisions. The property tax is determined by multiplying a mill rate times the real property's taxable value. A mill rate is the amount of tax paid per dollar of the taxable value of property. One mill is equal to one-tenth of one cent or $1 for each $1,000 of taxable value. The mill rate is determined by dividing the total taxes to be collected (revenue needs) in each taxing district by the total taxable value of property within the district. The total taxes to be collected is determined by the governing body of the political subdivision through the budgeting process but subject to maximum levy limitations established by statute.

Taxable Value

Taxable value of property is determined based on the true and full value and the assessed value of the property. The true and full value of residential and commercial property is the local assessor's estimate of the market value of the property. For residential property, the assessed value is 50 percent of the true and full value, and the taxable value is 9 percent of the assessed value. For commercial property, the assessed value is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

The true and full value of agricultural property is based on productivity and is calculated by North Dakota State University (NDSU) using the capitalized average annual gross return of the land. The Tax Commissioner receives information from NDSU and certifies to the county directors of tax equalization the estimated average true and full agricultural value of farm and grazing land in each county. The assessed value of agricultural property is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

Property tax assessments for railroads, investor-owned public utilities, and airlines are determined by the State Board of Equalization. The assessed value of these centrally assessed properties is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

Other Taxes

Taxes collected in lieu of property taxes include:

- **Telecommunications carriers** - Telecommunications carriers are assessed a tax of 2.5 percent of

their adjusted gross receipts by the State Board of Equalization.

- **Rural electric cooperatives** - Effective January 1, 2010, property of rural electric cooperatives is subject to generation, distribution, and transmission taxes pursuant to Chapter 54-33.2.
- **Coal conversion facilities** - The coal conversion tax is in lieu of property taxes on investor-owned or cooperative electrical generating plants which have at least one unit with a generating capacity of 10,000 kilowatts or more of electricity, other coal conversion facilities which consume 500,000 tons or more of coal per year, or coal beneficiation plants. The lands on which the plants are located remain subject to the ad valorem property tax.
- **Oil and gas gross production tax** - Oil and gas gross production tax is imposed in lieu of property taxes on oil and gas-producing properties. The gross production tax for oil is based on the gross value at the well of oil produced. The gross production tax for gas is an annually adjusted flat rate per thousand cubic feet of all nonexempt gas produced in the state.
- **Tourism or concession license fee** - A license fee in lieu of property taxes is imposed for state-owned property leased from the superintendent of the State Historical Board or the director of the Parks and Recreation Department and used for tourism or concession purposes.
- **Potash** - A tax of 2 percent on the sale price of potash and 4 percent on the gross value of all subsurface mineral byproducts of potash production has been imposed in lieu of property taxes for taxable production occurring after June 30, 2011. The land and processing facility, mining facility, or satellite facility is assessed and taxed the same as other property within the taxing district in which the potash property is located.

Statewide Property Taxes

The committee received the following information relating to statewide average mill rates, property tax valuations, and ad valorem property taxes levied as reported by the Tax Commissioner for taxes payable in 2001 through 2010:

	Average Mill Rate	Taxable Value	Taxes Levied[1]
2001	392.07	$1,298,333,166	$509,032,721
2002	390.33	$1,364,577,713	$532,629,675
2003	392.78	$1,427,642,584	$560,751,909
2004	399.24	$1,468,874,722	$586,412,017
2005	402.70	$1,534,816,263	$618,065,693
2006	401.66	$1,642,672,714	$659,789,374
2007	397.41	$1,777,593,059	$706,427,621
2008	392.15	$1,888,388,390	$740,540,738
2009	390.02	$1,990,645,138	$776,398,475
2010	319.37[2]	$2,125,303,286	$678,749,378[2]

[1]The amounts shown include ad valorem property taxes only and do not include payments in lieu of taxes.

[2]The Legislative Assembly in 2009 Senate Bill No. 2199 provided property tax relief by appropriating $295 million from the general fund to the Department of Public Instruction for allocation to school districts to reduce school district property taxes for the 2009-11 biennium. The funding provides for a reduction of up to 75 mills in school district property tax levies and replacement of the revenue to school districts by providing mill levy reduction grants.

Political Subdivision Bonded Indebtedness

The committee received information regarding bonded indebtedness based on a Legislative Council survey of political subdivisions. The survey was distributed to all cities and counties. Twenty-two cities and 31 counties responded. The most common type of current outstanding debt reported by cities was special assessments accounting for 33 percent and revenue bonds accounting for 28 percent. The most common type of current outstanding debt reported by counties was special assessments accounting for 58 percent and general obligation (GO) bonds accounting for 27 percent. Twelve cities and 11 counties reported future anticipated indebtedness in the next 24 months.

Property Tax Foreclosures

The committee received information regarding the number of properties foreclosed on due to nonpayment of property taxes based on the Legislative Council survey of political subdivisions. The committee learned 30 counties reported a total of 265 properties foreclosed on in 2008, 195 properties foreclosed on in 2009, and 446 properties foreclosed on in 2010.

Types of Bonded Indebtedness

Under current constitutional provisions, a political subdivision's outstanding debt may not exceed 5 percent of the assessed value of taxable property in the political subdivision. The committee received information on the following types of bonded indebtedness that may be incurred by political subdivisions:

- General obligation bonds - Most political subdivisions are authorized to issue GO bonds for building projects, infrastructure, and equipment. At the time GO bonds are issued, Article X, Section 16, of the Constitution of North Dakota, requires an irrepealable tax levy until the bonds are paid.
- Limited tax bonds - Limited tax bonds are payable from property tax, like GO bonds, but are limited to a certain number of mills. Limited tax bonds are considered part of the political subdivisions' constitutional debt limit.
- Certificates of indebtedness - For the financing of current budgets and cashflow needs, North Dakota law permits political subdivisions to issue certificates of indebtedness against anticipated revenues in the form of levied but uncollected taxes and distributions of state and federal funds.
- Special assessment bonds - Cities, counties, and certain other political subdivisions are authorized to finance improvements through special assessments. Public school districts do not have

special assessment authority. If special assessment collections are insufficient to pay the bonds, the political subdivision is required to certify an excess mill levy without limit on all taxable property to pay the bonds. Special assessment bonds are not subject to the constitutional debt limit.

- Revenue bonds - Several political subdivisions, including cities, park districts, water districts, and water resource districts are authorized to issue revenue bonds. Revenue bonds are payable solely from user revenues generated by a particular enterprise or sales tax. Revenue bonds are not subject to the constitutional debt limit.
- Tax increment bonds - Cities are authorized to finance public improvements for slum and blighted areas through the issuance of tax increment financing (TIF) revenue or GO bonds.
- Lease financing - In the context of public finance, lease financing includes various types of agreements, such as installment purchase contracts, installment sales contracts, and purchase orders, in addition to leases. Lease purchase financings result in the acquisition of the building or equipment at the end of the lease term.

Initiated Measure Construction

The committee received information from the Legislative Council legal staff relating to the construction of an initiated measure. The committee learned there is very little, aside from voter approval of a correction, which could be done to correct errors or discrepancies that may be discerned in an initiated constitutional amendment. If the words of the measure are not ambiguous, they must be given effect. If words are ambiguous, established rules of construction may be applied. If the plain meaning or construction of the words yields an undesirable result, the only option is to amend the law, which would require approval of a majority of votes at a statewide election. The only authority for corrections aside from approval at a statewide election would apply to misspelling or grammatical or punctuation errors, and even in those cases, extreme caution would be needed to avoid any substantive change.

Attorney General Opinion

An Attorney General opinion (Letter Opinion 2011-L-10) was issued on November 1, 2011, regarding the effective date of the initiated measure. In his opinion, the Attorney General stated the initiated measure, if approved by the voters at the June 12, 2012, primary election, is retroactively effective as of January 1, 2012.

Analysis of Initiated Measure No. 2

The committee received information from the Legislative Council legal staff relating to an analysis of the initiated measure prohibiting property taxes. The following is a summary of the analysis:

- Effective date - The effective date of the initiated measure, or the date when the measure should be applied, is January 1, 2012. The measure would be effective for the entire 2012 tax year. The measure does not affect taxes levied but not paid by December 31, 2011, because the Supreme Court has ruled that repeal of law does not extinguish the liability of taxes imposed before the law is repealed.
- Elimination of property taxes - If the initiated measure is approved by North Dakota voters in June 2012, property taxes levied on the assessed value of property would be eliminated. This would include elimination of property taxes dedicated to retirement of political subdivision GO bond issues because the taxes levied for those purposes are a tax on assessed value of real property. However, bonded indebtedness is issued under a contractual agreement between the political subdivision and the bondholders that dedicated property taxes will be levied until the bonded indebtedness is retired. This contractual agreement would be "substantially impaired" if the measure is interpreted to remove the authority to levy the property taxes required to make payments to bondholders, which may be a violation of the contract clause of Article 1, Section 10, of the United States Constitution. Therefore, to comply with the United States Constitution, the measure may be interpreted by a court to require property tax levies relating to GO bonds to continue until those bonds issued prior to the effective date of the initiated measure are retired.
- Special assessments - Special assessments would not be eliminated by enactment of initiated measure No. 2. The amount of special assessments against a property is not allowed by law to be based on the assessed value of the property but are required to be based on the property's "just proportion of the total cost of such work" and "not exceeding the benefits" to the property (Section 40-23-07).
- In lieu of property taxes - The following taxes imposed as in lieu of property taxes would not be affected by the initiated measure because they are not based on the assessed valuation of property:

  Oil and gas gross production tax.

  Oil extraction tax.

  Coal severance tax.

  Coal conversion tax.

  Electric generation, distribution, and transmission taxes.

  Telecommunications tax.

  Financial institutions tax.

  Taxes on the following types of property would be eliminated because the payments in lieu of property tax are based on the assessed value of the property:

  Farmland and ranchland owned by nonprofit organizations for conservation purposes.

Game and Fish Department lands.

National Guard land.

Land owned by the Board of University and School Lands or the State Treasurer.

Carbon dioxide pipelines.

Devils Lake project land.

Workforce Safety and Insurance building.

- Replacement of revenue - Because the word "used" is included in subsection 1 of Section 2 of the measure rather than the word "levied," it appears the intention of the drafters of the measure is to require the state to replace expenditures from property taxes rather than levied and collected. Subsection 1 of Section 2 appears to establish a baseline funding level of 2011 calendar year expenditures from real property tax revenues of the political subdivision and certain in lieu of tax revenues. This appears to be the amount of funding the state is required to replace for the political subdivisions.
- Legally imposed obligations - Subsection 3 of Section 2 of the measure requires the Legislative Assembly to allocate a share of state taxes to "fully and properly fund the legally imposed obligations" of political subdivisions. However, because the measure does not define "legally imposed obligations" or "fully and properly fund," the measure appears to provide the Legislative Assembly discretion in determining the proper level of funding.
- Market value of property - Market value is not defined by the measure or by statute, except as one component of determining "true and full value." Even if it is interpreted as equivalent to "true and full value," market value for agricultural property is clearly not the value determined by the productivity valuation formula. It appears that the word "taxable" was removed by the drafters of measure No. 2 because upon enactment there will no longer be "taxable" property. However, removal of the word "taxable" leaves the word "property" standing alone, which includes all property. The plain language of the provision appears to require determination of market value of real and personal property, and the measure does not appear to allow any discretion for the Legislative Assembly to exclude any kind of personal property. Literal application of this language would result in an enormous expansion of assessment responsibilities, costs, and intrusion into what citizens have deemed to be outside the reach of governmental inquiries. This expansion of assessment would serve only the limited purpose of determining debt limits for the state and political subdivisions.

Other Testimony and Information

Initiative Petition Sponsoring Committee

The committee received information from the initiative petition sponsoring committee, including analyses of the provisions of the initiated measure and a report from Beacon Hill Institute commissioned by the sponsoring committee. Analyses provided by the initiative petition sponsoring committee included the following:

- Revenue from property taxes would be replaced with revenues from the proceeds of state sales taxes, individual and corporate income taxes, oil and gas production and extraction taxes, tobacco taxes, lottery revenues, financial institution taxes, and other state sources.
- The state would be required to provide funding for the share of elementary and secondary education not funded through state revenue sources before 2012.
- School boards would have sole discretion of determining expenditures of the new funding provided by the state.
- The state would be required to devise a formula to fully and properly fund the legally imposed obligations of political subdivisions.
- Political subdivisions would have sole discretion of determining expenditures of the funding provided by the state.

The Beacon Hill report included the following estimates:

- Property tax administration costs local governments approximately $25 million per year.
- The elimination of property taxes would increase private sector jobs by 11,789 in the first year.
- The increase in private sector jobs would be offset by the loss of 11,908 public sector jobs in state and local governments.

The Beacon Hill report provided an analysis of three different scenarios for replacement of revenues if the measure is approved by voters. The scenarios included no sales tax increase, increasing sales tax to provide 50 percent of the property tax revenue loss, and increasing sales tax to provide 100 percent of the property tax revenue loss. The report indicates if property taxes are eliminated, the private sector economy would benefit; however, if sales tax rates are increased to replace all or a portion of the property tax revenue loss, many of the benefits would be reduced or become negative.

North Dakota Association of Counties

The committee received testimony from the North Dakota Association of Counties regarding the potential effect of the initiated measure on county revenue sources. The committee learned counties are concerned that if the initiated measure is approved by voters there could be a reduction in services in rural counties, and over time revenues which are meant to replace property taxes will not be sufficient to provide for increased costs in the counties.

North Dakota League of Cities

The committee received information from the North Dakota League of Cities regarding the tax levies in North Dakota cities as follows:

	2010	2009	2008	2007	2006
Cities levying 200 or more mills	5	3	3	3	2
Cities levying 150-199 mills	19	20	19	15	15
Cities levying 100-149 mills	64	66	73	79	84
Cities levying 90-99 mills	23	23	23	27	29
Cities levying 80-89 mills	27	31	38	29	27
Cities levying 70-79 mills	39	48	34	32	34
Cities levying 60-69 mills	38	29	37	35	31
Cities levying 50-59 mills	31	30	29	31	36
Cities levying 40-49 mills	47	48	42	47	37
Cities levying 30-39 mills	37	34	30	29	36
Cities levying 20-29 mills	5	5	6	6	4
Cities levying 10-19 mills	3	3	5	5	4
Cities levying under 10 mills	6	5	6	5	5
Cities with no levy	13	12	12	14	13
Total number of cities	357	357	357	357	357

North Dakota School Boards Association and North Dakota Council of Educational Leaders

The committee received testimony from the North Dakota School Boards Association and the North Dakota Council of Educational Leaders regarding the potential effect of the initiated measure on school district revenue sources. The committee learned school districts are concerned that the initiated measure would have a significant impact on the funding formula currently in place for school districts and potentially result in inequitable distribution of funding among school districts. The committee also learned that school districts are concerned that total dependence on state funding would prevent school districts from addressing unique needs of each school district.

Other Testimony

The committee received other reports and testimony, including testimony from citizens of North Dakota in support of and opposed to the initiated measure. Opinions expressed to the committee include:

- Property taxes are an ineffective, inefficient method to tax citizens for local services.
- North Dakota Century Code allows for a perpetual lien on property which can be exercised if a person becomes delinquent on the payment of property taxes. The perpetual lien on property is not affected by any statute of limitation.
- Debt levels of local governments are increasing.
- The initiated measure will not result in a reduction in the aggregate tax liability but only how the taxes are paid and who pays them.
- The administrative cost of assessing property is overstated in the Beacon Hill report.
- State and local governments could not eliminate all full-time equivalent positions related to property value assessment because the initiated measure requires the continuation of this assessment to determine debt limits for political subdivisions.

Estimated Fiscal Impact of Initiated Measure No. 2

The committee received information from the Tax Commissioner's office regarding the estimated fiscal impact of initiated measure No. 2. The committee learned the measure will repeal ad valorem property taxes effective January 1, 2012. The amount of property taxes that would be eliminated upon successful passage of the measure would total $812,225,000 for 2012. The estimated fiscal impact assumes the effective date of the measure would initially impact and repeal 2012 property taxes that would be due and payable in 2013. The estimated fiscal impact reflects only one year of the 2011-13 biennium. The impact for subsequent bienniums would reflect a two-year period. Based on the historical property tax growth of 7.7 percent per year, the estimated fiscal impact of the measure for the 2013-15 biennium would be $1.8 billion.

The committee discussed the potential need for a special legislative session prior to the 2013 regular session to provide funding to political subdivisions beginning January 1, 2013, if the measure is approved.

TAXATION COMMITTEE

The Taxation Committee was assigned nine studies. Section 6 of Senate Bill No. 2006 (2011) directed a study of income tax credits. Section 13 of Senate Bill No. 2032 (2007) directed a study over three interims of property tax reform and relief. Section 2 of Senate Bill No. 2356 (2011) directed a study of use of special assessments. Section 3 of House Bill No. 1322 (2011) also directed a study of special assessments, with the additional directive to examine agricultural property taxes. Section 16 of House Bill No. 1047 (2011) directed a study of corporate income taxes. Section 3 of House Bill No. 1246 (2011) directed a study of sales tax exemptions. Section 1 of House Bill No. 1417 (2011) directed a study of a sales tax exemption for health-related clinics. House Concurrent Resolution No. 3030 (2011) directed a study of use of cigarette tax stamps. The Chairman of the Legislative Management directed a study of oil extraction tax rates and exemptions.

The Legislative Management directed the committee to receive six reports. These include reports on renaissance zone progress, state grantor and business tax incentives, county use of allocations of oil and gas gross production tax revenues, cost-benefit analysis during the 2013-14 interim of certain coal severance tax exemptions, cities in which a renaissance zone is included in a tax increment financing district, and activities of each angel fund in the state.

Committee members were Senators David Hogue (Chairman), Randy Burckhard, Dwight Cook, Jim Dotzenrod, Lonnie J. Laffen, Dave Oehlke, and Ronald Sorvaag and Representatives Larry Bellew, Wesley R. Belter, David Drovdal, Glen Froseth, Lyle Hanson, Patrick Hatlestad, Craig Headland, Richard Holman, Jim Kasper, Shirley Meyer, Mike Nathe, Marvin E. Nelson, Mark S. Owens, and Roscoe Streyle.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

INCOME TAX CREDITS STUDY

The committee reviewed the history of individual income tax rates, exemptions, and credits from 1919 to 2011. More than 366,000 returns were filed for 2009, and about 21.2 percent of the returns had no income tax liability. Average individual tax return liability for 2009 was approximately $825 across all filers.

The committee reviewed the use and fiscal effect of individual and corporate income credits for tax years 2006 through 2009. The property tax relief credits allowed against the income tax in 2007 and 2008 had by far the most significant fiscal effect during those tax years. Excluding the property tax relief credits, the most commonly claimed individual income tax credits were for income taxes paid to another state by a North Dakota resident and the marriage penalty credit. The most common individual credits with economic development objectives were the seed capital investment credit and the renaissance zone credit, which had a fiscal cost to the state in 2009 of approximately $2.9 million and $1.1 million, respectively. Corporate income tax credits are fewer in number and significantly less in cost to the state. The corporate income tax credit with the greatest fiscal impact is the research expense credit, which in 2009 was claimed by 14 corporations at a total cost to the state of approximately $2.6 million. The next most costly corporate income tax credit in 2009 was the agricultural commodity processing facility investment credit, claimed by seven corporations at a total cost to the state of less than $100,000.

Corporate income apportionment for corporations doing business among several states or countries is based on a three-factor apportionment formula using property, payroll, and sales. Many states have increased weighting of the sales factor to shift more corporation income into the state for taxation. North Dakota has relied on the equally weighted three-factor apportionment formula. As a corporation's property ownership, payroll, or sales in North Dakota increase, the apportionment factors will mean a larger share of that corporation's multistate and multinational income is taxable in North Dakota. For example, substantial growth of investment in North Dakota by oil companies means not only increased income in North Dakota, but also that a greater portion of the company's total multistate and multinational income is taxable in North Dakota.

Reports on Effectiveness of Credits

The committee reviewed Department of Commerce reports on business incentive accountability and renaissance zone activity. City and economic development organization representatives supported existence and use of tax credits and other economic development tools of local government, emphasizing that these tools are particularly important for smaller communities trying to maintain or develop jobs.

Tax incentives are difficult to evaluate. There is no way to know if company growth is attributable to the tax credit or if the company would have grown or located elsewhere without the credit. The Department of Commerce report focused on tax incentives for individual projects to determine if there was a return in tax collections to the state from foregoing tax revenues during use of the credit. The agricultural commodity processing facility tax credit cost the state $5.4 million in tax credits for 2005 and 2006 but was estimated to increase tax collections by $5.2 million in 2007. The development fund credit cost the state $8.8 million over eight years but was estimated to increase tax collections by $20.3 million in 2007. The manufacturing sales tax exemption cost the state $12.3 million in 2005 and 2006 and was estimated to increase tax collections $10.9 million in 2007. The seed capital investment tax credit cost the state $4.1 million in 2005 and 2006 and was estimated to increase tax collections $234,000 in 2007.

Evaluation of the effects of tax incentives on economic growth and subsequent tax collections is not an exact

science. It appears a properly targeted and administered tax incentive can achieve increased economic growth and increased employment and an ultimate growth in state and local tax revenue.

The committee received no comments suggesting changes to individual or corporate income tax credits.

Conclusion

The committee makes no recommendation as a result of its study of income tax credits.

PROPERTY TAX REFORM AND RELIEF STUDY

The property tax reform and relief study was a continuation of a study initiated by the directive in Section 13 of Senate Bill No. 2032 (2007) with stated goals of reduction of each taxpayer's annual property tax bill to not more than one and one-half percent of the true and full value of property, examination of the proper measure of education funding from local taxation and state sources, and examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty.

The study of property tax reform and relief had an increased level of emphasis during the interim as taxpayers' dissatisfaction with property tax burdens continued to be expressed to legislators and property taxes became an issue of heightened public debate during consideration of an initiated measure to eliminate property taxes, which was ultimately defeated by voters at the June 2012 primary election. Although the measure was defeated by an extremely large margin, some committee members said they believe from public discussion of the property tax measure that voters were expressing their trust that the Legislative Assembly will put increased emphasis on increasing property tax relief in 2013.

Because of the increased level of public discourse and attention to property tax burdens, the committee invested the majority of its committee deliberations on the property tax reform and relief study.

Background

In 2007 the Legislative Assembly provided property tax relief through Senate Bill No. 2032, which provided property tax relief through the income tax system. The bill provided property tax credits for residential property occupied as a primary residence and for agricultural and commercial property owned by an individual whose primary residence was in North Dakota. The income tax relief provided $115 million of benefit to taxpayers, but use of the income tax delivery system created some confusion and administrative difficulties. The Legislative Assembly pursued a different method of delivering property tax relief beginning in 2009.

Senate Bill No. 2199 (2009)

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 state funding replacement revenue to school districts through mill levy reduction grants. This reduced the maximum levy for most school districts to 110 mills. 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 110-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 in the 2011-13 biennium.

House Bill No. 1047 (2011)

The 2009-10 interim Taxation Committee recommended extension of the 2009 property tax relief legislation. The recommendation was enacted as House Bill No. 1047. The bill was amended by the Legislative Assembly to incorporate income tax and financial institution tax relief provisions.

House Bill No. 1047 provided property tax relief by appropriating $341,790,000 for the 2011-13 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 for replacement of the revenue through mill levy reduction grants. The bill provisions were essentially the same as the 2009 provisions except the 2011 bill limited the grant to a school district so the current year grant to a school district may not exceed the grant in the preceding school year by more than the percentage increase in statewide taxable valuation, provided for recognition and adjustment for certain property types that are not subject to traditional property taxes but which provide revenue to school districts, and made clear a school district that does not receive voter approval for extension of authority to levy in excess of statutory mill levy limitations may retain the authority to levy based on the highest dollar amount levied in the most recent three years.

Property Taxes Increases

Despite the significant increases in state-level funding allocations and appropriations to assist political subdivisions, property taxes have continued to increase. In the 10 years from 2002 through 2011, total property taxes in the state increased by more than $200 million per year, despite an infusion of property tax relief funding that reduced annual property taxes beginning in 2009.

Other 2011 Property Tax Legislation

House Bill No. 1194 provided that a taxing district may not impose a property tax levy exceeding a zero increase number of mills unless the taxing district publishes newspaper notice of a public hearing on the property tax levy and conducts that hearing.

House Bill No. 1144 allowed a city or county to impose crew housing permit fees for lodging units or skid units that are not taxable as real property or as mobile homes.

Senate Bill No. 2294 improved administration and uniformity of property tax assessments. The bill increased State Board of Equalization authority to ensure property assessment equalization is taking place throughout the state and among jurisdictions.

Property Tax System

The property tax liability of a property owner is determined by multiplying combined mill rates for all taxing districts in which the property is located times the taxable value of the property. Although this formula is relatively simple, complexities are involved in determining the mill rate, taxable value, and tax status for the property.

Determination of Mill Rate

The mill rate for a taxing district is established through the budget process. Each taxing district prepares a proposed budget based on anticipated expenditures for the upcoming fiscal year. The level of spending determines how much money must be raised through property taxes.

The amount budgeted by a taxing district may not result in a tax levy exceeding statutory levy limitations. Under mill levy limits, a taxing district gains additional dollars of levy authority from new taxable property and increased assessed values of existing property, while under limits based on dollars levied in prior years only new taxable property increases dollars of levy authority.

The county auditor divides the total property taxes to be collected for the taxing district by the taxing district's total taxable valuation. This generates a percentage that is the mill rate for the district. If the mill rate exceeds the statutory limit, the county auditor reduces it to the limit. This percentage or mill rate is applied to the taxable valuation of property to determine the owner's property tax due to the taxing district.

Assessment of Locally Assessed Property

Real property must be assessed with reference to its value on February 1 of each year. All property must be valued at its "true and full value." True and full value is defined as the value determined by considering any earning or productive capacity, the market value, and all other matters that affect the actual value of the property to be assessed. For purposes of agricultural property, true and full value is determined by a productivity formula. The assessed value of property is equal to 50 percent of the true and full value of the property. Taxable value is 9 percent of assessed value for residential and 10 percent for agricultural, commercial, and centrally assessed property. The mill rate for each taxing district is applied to taxable value to determine the tax liability for a parcel of property.

Residential and commercial property true and full value is established by local assessors. True and full value of railroad, public utility, airline property, and oil or gas pipeline property is determined centrally by the State Board of Equalization.

True and full value of agricultural property is based on a productivity formula based on the capitalized average annual gross return of the land. Annual gross return is determined from crop share rent, cash rent, annual gross income, or annual gross income potential. Average annual gross return for each county is determined using annual gross returns for the county for the most recent 10 years, discarding the highest and lowest annual gross return years, and averaging the remaining 8 years. The most recent 10 years of farmers' production costs are applied to adjust annual gross return. Annual gross return is then capitalized using a 10-year average of the most recent 12-year period for the gross agribank mortgage rate of interest. However, the minimum capitalization rate under the formula was set at 9.5 percent for tax year 2004, 8.9 percent for tax year 2005, and 8.3 percent for tax years 2006 through 2008. Under a 2009 amendment, the minimum capitalization rate was 8 percent for 2009, 7.7 percent for 2010, and 7.4 percent for 2011. After 2011 there will be no minimum capitalization rate. An average agricultural value per acre is determined for cropland and noncropland on a statewide and countywide basis. This information is provided to each county director of tax equalization. The county director of tax equalization provides each assessor within the county an estimate of the average agricultural value of agricultural lands within the assessor's assessment district. The local assessor must determine the relative value of each assessment parcel within that assessor's jurisdiction. In determining relative values, local assessment officials are to use soil type and soil classification data, a schedule of modifiers approved by the State Supervisor of Assessments, and actual use of the property by the owner.

Assessment of Centrally Assessed Property

The owner of centrally assessed property must file an annual report with the Tax Commissioner by May 1. The Tax Commissioner prepares a tentative assessment for the property by July 15. Notice of the tentative assessment is sent to the property owner at least 10 days before the State Board of Equalization meeting. On the first Tuesday in August, the State Board of Equalization meets to receive testimony on the value of centrally assessed property and to finalize assessments. The Tax Commissioner certifies the finalized assessments to the counties to reflect the portion of centrally assessed property for each property owner which is taxable in that county.

Airlines serving North Dakota cities pay a property tax computed by averaging mill levies in all the cities served by an airline and applying the average levy against the taxable valuation of property of the airline in North Dakota. Taxes imposed on an airline are collected by the State Treasurer and distributed to the cities in which the airline operates to be used exclusively for airport purposes.

Payments In Lieu of Taxes

State law provides some enterprises make payments in lieu of taxes rather than pay property taxes. Mutual or cooperative telephone companies and investor-owned telephone companies pay a tax of 2.5 percent of adjusted gross receipts, which is allocated among counties.

Rural electric cooperatives pay a transmission line mile tax of $50 to $600 per mile and a tax of $1 per megawatt-hour for retail electricity sales to consumers in this state. Revenues are allocated to political subdivisions based on location of transmission lines and based on location of sales through distribution lines. Rural electric cooperatives with generating facilities are subject to a transmission line tax of $225 to $300 per mile in lieu of property taxes on transmission lines of 230 kilovolts or more.

Coal conversion facility taxes and oil and gas gross production taxes are paid in lieu of property taxes. These taxes are allocated by state law and provide revenues to affected taxing districts.

Property owned by certain state agencies, nonprofit entities, and agencies and instrumentalities of the federal government are subject to payments in lieu of property taxes. Mobile homes, certain pipelines, certain transmission lines, and certain forest lands are subject to payments in lieu of property taxes. New and expanding businesses may be granted the right to make payments in lieu of property taxes under North Dakota Century Code Section 40-57.1-03.

Property Tax Statistics and Political Subdivision Revenues

In taxable year 2010, political subdivisions levied almost $814 million in property taxes and special taxes. The constitutional one-mill levy for the State Medical Center was imposed in the amount of $2.3 million, bringing the total property and special taxes imposed to more than $816 million. The following table shows the percentage of this amount levied by each type of political subdivision and the percentage increase in property taxes and special taxes levied by each type of political subdivision from 2001 through 2010. Because the State Medical Center levy is always imposed at a rate of one mill, the 67.5 percent increase shown in the table for the State Medical Center can be assumed to be approximately equal to the increase in taxable valuation in property statewide.

	Percentage of Statewide Property Taxes and Special Taxes[1] Levied in 2010	Percentage Increase in Property Taxes and Special Taxes[1] Levied 2001 Through 2010
School districts	45.14%	9.9%
Counties	29.86%	69.9%
Cities	15.37%	57.5%
City park districts	5.51%	81.4%
Townships	2.23%	48.9%
Rural fire protection	0.83%	91.8%
Garrison Diversion	0.25%	80.3%
Soil conservation districts	0.36%	192.6%
State Medical Center	0.32%	67.5%
Other[2]	0.13%	68.8%
Tax increment districts	N/A[3]	79.7%
Special assessments	N/A[3]	65.0%

[1]"Special taxes" includes mobile home taxes, rural electric cooperative taxes, woodland taxes, and payments in lieu of taxes.

[2]"Other" includes West River/Southwest Water Authority, hospital districts, rural ambulance districts, and recreation service districts.

[3]Tax increment district and special assessment collections are almost entirely included in city levies reflected in this table. They are included here only to show the relative rate of increase.

State Funding to Political Subdivisions

Comparison of appropriations and revenue allocations for 2001-03 and 2011-13 bienniums shows an increase of 145 percent in state appropriations and revenue allocations to political subdivisions over that time period. This can be compared with an increase of 38 percent in political subdivisions' property taxes and special taxes levied from 2001 to 2010. The Legislative Assembly has acted to control growth of the property tax burden. However, costs of local government continue to rise at a brisk pace. A large part of the increase in state allocations to political subdivisions came from property tax relief of $295 million for the 2009-11 biennium and $342 million for the 2011-13 biennium to reduce school district property taxes, 2011 appropriation increases for state school aid per student totaling approximately $167 million more than in the 2007-09 biennium, 2011 appropriations of $167 million for local transportation projects, 2011 energy development impact grants increases totaling nearly $100 million, and very significant increases in state aid distribution fund and oil and gas gross production tax allocations.

Effective Tax Rate

The effective tax rate is the percentage of property value paid in property taxes for the year determined by dividing taxes levied by the market value of property as determined by the sales ratio study. In 2007 the effective property tax rate was .81 percent for agricultural property, 1.90 percent for residential property, and 2.21 percent for commercial property. For 2009 taxes levied, the effective property tax rate was .48 percent for agricultural land, 1.47 percent for residential property, and 1.75 percent for commercial property. For 2010 effective property tax rates were .47 percent for agricultural property, 1.53 percent for residential property, and 1.74 percent for commercial property.

Property Tax Shifting

The committee examined the potential shifting property tax burden among property classifications. Growth in valuation of centrally assessed and agricultural property has outpaced valuation increases of residential and commercial property. From 2010 to 2012 a slightly higher share of the tax burden was transferred from residential and commercial property to agricultural and centrally assessed property. Much of the recent increase in agricultural taxable value is attributable to gradual elimination of the artificial floor on the capitalization rate for agricultural property, which is completed. It is anticipated agricultural values will stabilize and decline in the future as a share of statewide taxable valuation, reversing the shift of property tax burden from agricultural property to other property types.

Property Tax Growth

Total state and local property taxes and special assessments increased by almost $37 million from 2010

to 2011. Most of the increase is attributable to school district property tax increases of approximately $21 million and county property taxes of approximately $11 million. Cities levied slightly less in property taxes in 2011 than they did in 2010.

The committee received a projection that continuation of the mill levy reduction grant property tax relief allocations to school districts on essentially the same terms as provided for the 2011-13 biennium would have a cost to the state of approximately $403 million. If the level of relief is adjusted from the existing 75-mill levy reduction cap to a maximum reduction of 65 mills, the cost to the state to provide relief would be reduced to approximately $353 million. The cost to the state of increasing the mill levy reduction grant program to cover the cost of up to 185 mills of school district property tax levies would be approximately $1 billion.

Political Subdivision Debt Information

The committee pursued information on building authority financing of public buildings for lease to a political subdivision. The committee considered a bill draft to require filing of information at a central information point to allow location of information on indebtedness through building authorities and for political subdivision debt in general. It was pointed out that information is available through Internet sources to provide information on political subdivision indebtedness and indebtedness incurred through use of a building authority.

School District Objections

The committee received testimony from representatives of several school districts, all of which were levying fewer than 185 mills in 2008. The 2009 mill levy reduction grant legislation capped these districts at a combination of property tax revenue and property tax relief equal to the 2008 levy. If a district levied 150 mills in 2008, that district received 50 mills per year of mill levy reduction grant funding for 2009 to 2012 school years. In addition, that school district had up to 110 mills of property tax levy authority, meaning the district could not achieve 185 mills of funding without voter approval as the mill levy reduction grant program is currently structured. These school district representatives expressed the opinion that for schools in their situation the mill levy reduction grant program is unfair because it has deprived them of a range of potential unused funding they had in 2008.

Residential Property Tax Credit

Committee members expressed interest in residential property tax exemption, under which the state would pay the property tax obligations for a specified value of primary residential property. The committee examined options and obtained estimated costs to the state of such an exemption.

One of the perceived advantages of the primary residential property tax credit is to focus all or part of property tax relief on North Dakota residents. The committee received an estimate that 37 percent of commercial property, 16 percent of agricultural property, and 2 percent of residential property is owned by nonresidents.

The committee received an estimate that the annual cost of a primary residential property tax credit would be $182 million at a credit to cover taxes on $75,000 of property value, $232 million at a credit of $100,000, $273 million at a credit of $125,000, and $303 million at a credit of $150,000. These estimates were prepared with the assumption the mill levy reduction grant program would be continued at approximately the same level of tax reduction.

Residency Determination

There is no existing method to identify which residential properties are homestead or to determine residency of property owners without obtaining information directly from the property owner. To encourage owners to provide such information, it was suggested some kind of incentive is necessary that would motivate the owner to provide the information. Such an incentive exists under the existing homestead credit, but only residents aged 65 or older or disabled are eligible.

Mobile Home Taxes

Mobile homes are subject to a separate tax based on assessment and application of local mill rates. Mobile home taxes are payable in January and apply for the remainder of that year. Property taxes are payable for the most recently ended year. Mobile homes are subject to tax paid in advance because in earlier times, mobile homes were easy to move to avoid tax collection. Mobile homes are now very seldom moved from the location where they are located initially. Because differing tax years for mobile homes and real property complicate tax administration and providing tax relief, the committee examined synchronizing the taxable years for mobile homes and real property.

Withdrawal of Exemptions

In consideration of a situation brought to the committee's attention, it was determined in the absence of a written agreement a city does not have legal authority to withdraw a property tax exemption granted to a new or expanding business. Because of the lack of authority, the committee considered a bill draft that would establish statutory conditions under which a city or county may withdraw or reduce a property tax exemption.

Committee Deliberations

The mill levy reduction grant from school districts method of allocating property tax relief has been effective to reduce property taxes for all classes of property. The method has an element of equity, but some school districts believe there are inequities. Providing allocations directly to counties for distribution to political subdivisions would not force state funding to increase with property valuation but must be based on estimates because the lack of final assessment and levy information needed to calculate and distribute tax statements would make it necessary to use estimated amounts. The residential property tax credit approach involves unknowns. Until this approach has been in place, estimated costs would be based on educated guesses. An aspect of this approach some view as a positive feature is that relief could be

targeted to North Dakota residents and would allow accurate determination of North Dakota residency status. A learning curve would be involved for taxpayers because at least an initial claim for the credit would have to be filed. The cost of the mill levy reduction grant approach and the residential property tax credit approach would grow with home values, or mill rates, or both, depending on how it is structured.

One of the concerns with property tax relief provided through the mill levy reduction grant program is the cost to the state increases annually by approximately the increase in valuation of property in the state. The committee examined recent and forecasted future increases in statewide property valuation. Statewide taxable valuation growth was estimated to increase 12.27 percent in 2012, largely because of an estimated 22.73 percent increase in agricultural land taxable value. The substantial increase in agricultural property taxable valuation is a one-time adjustment. Agricultural property is estimated to increase by 6.24 percent in 2013. It is estimated that statewide 2013 taxable valuation would increase by 7.66 percent. In certain areas of the state, taxable valuation has increased at a much more rapid rate than other areas because of booming new construction and the demand for housing far exceeds the supply. It is expected that at some point, availability of housing will meet the level of demand and valuations will stabilize. Some committee members expressed concern with a property tax relief approach that ties state funding obligations to property valuation increases because valuation and cost increases will make it difficult for the state to sustain long-term property tax relief.

Recommendations

The committee recommends Senate Bill No. 2036 to provide property tax relief by appropriating $403 million for the 2013-15 biennium for allocations to school districts to reduce school district property taxes. The bill provides for a school district levy reduction of up to 75 mills based on 2008 mill rates, restriction on school district property tax levies, and state revenue replacement to school districts.

The committee recommends Senate Bill No. 2037 to provide property tax relief by appropriating $403 million for the 2013-15 biennium for allocations to school districts to reduce school district property taxes. The only significant difference from previous mill levy reduction grant legislation is this bill allows school districts that were levying fewer than 185 mills in 2008 to increase levies by a portion of the mills by which the district was under 185 mills and to obtain state matching funds for one-half of the increased number of mills.

The committee recommends House Bill No. 1044 to provide a residential property tax credit for an individual's primary residence. The bill provides for state payment of property taxes on the first $75,000 of true and full valuation of the residence. For an individual 65 years of age or older, the credit is increased to cover taxes on the first $125,000 of true and full valuation of the residence. The credits provided are in addition to any homestead or disabled veterans credit. The bill appropriates $384 million for allocation of residential property tax credit funds to counties for the 2013-15 biennium.

The committee recommends House Bill No. 1045 to provide property tax relief by appropriating $200 million for the 2013-15 biennium for allocation to counties to provide a 10 percent reduction in property taxes levied against all property by all taxing districts.

The committee recommends Senate Bill No. 2038 to synchronize taxable years for mobile homes and real property. The bill provides delinquent mobile home taxes would be enforced under the provisions of law that apply to real property. The bill requires the application for a moving permit for a mobile home to be moved outside the state to show that taxes have been paid.

The committee recommends House Bill No. 1046 to allow a city or county to reduce or revoke a previously granted property tax exemption for new or expanded business property if the city or county finds the property is not being used as intended when the exemption was granted.

SPECIAL ASSESSMENTS STUDIES

The committee received two separate directives for study of special assessments. In addition to the study of special assessments, Section 2 of Senate Bill No. 2356 (2011) directed examination of possible processes and procedures that would facilitate a transition to any recommended alternative funding mechanisms and Section 3 of House Bill No. 1322 (2011) directed examination of agricultural property tax classification and assessment issues, with emphasis on these issues within and near city boundaries.

Statutory Authority for Special Assessment Imposition

North Dakota cities have had authority to levy special assessments for improvements since 1897, recreation service districts since 1975, water resource districts since 1981, counties since 1983, and townships since 2001.

Thirteen chapters of Title 40 govern improvements by special assessment in cities. Recreation service districts and county authorities adopt the city provisions by reference. Water resource district special assessment authority is contained in Chapter 61-16.1. Township special assessment authority is provided in Chapter 58-18.

Initiation of Process for Improvements by Special Assessment

A special improvement district may be created by ordinance or resolution adopted by a city governing body. There is no statutory provision for initiation of improvements by special assessment through a petition process, but city officials say special assessment districts are initiated almost universally by request of property owners. The size and the form of a special assessment district are decided by the city governing body after consultation with the city engineer.

A city may create a water district, sewer district, water and sewer district, street improvement district, boulevard improvement district, flood protection district, parking district, or business improvement district. After a special improvement district has been created, the city governing body must direct the city engineer to prepare a report as

to the nature, purpose, and feasibility of the improvement and an estimate of the probable cost of the project.

After approval of the city engineer's report, the city governing body may adopt a resolution declaring the necessity of the improvements. The resolution must be published once each week for two consecutive weeks in the official newspaper of the city.

Protest of Improvements by Special Assessment

Within 30 days after the first publication of the resolution of necessity, owners of property in the proposed improvement district may file written protests. If protests include owners of a majority of the area of property within the improvement district, the protest is a bar against proceeding further with the improvement project. If protests include owners of a majority of any separate property area included within the district, the protest bars the portion of the improvement to be assessed in whole or in part upon property within that area.

House Bill No. 1220 (2011) would have changed the basis for a successful protest to bar a special assessment project from owners of a majority of the area of property in the district to a requirement of protest by owners of property that will be subject to a majority of the proposed costs of the project. The bill failed to pass the House of Representatives.

Assessment of Benefits to Property Owners

The executive officer of a city must appoint three "reputable residents and freeholders" of the city to the special assessment commission for the city. The special assessment commission must determine the lots and parcels of property which will be "especially benefited" by the improvement and "determine the amount in which each of the lots and parcels of property will be especially benefited" and assess against each of such lots and parcels "such sum, not exceeding the benefits, as shall be necessary to pay its just proportion of the total cost of such work . . .". As an alternative, the special assessment commission may assess benefits against property on a per square-foot basis with consideration of the distance of the property from the marginal line of the public way or area improved. Property of political subdivisions is not exempt from special assessments.

The special assessment commission or the city auditor must prepare a list of benefits and assessments against each lot, tract, or parcel benefited by the improvement. The assessment list must be published in the official city newspaper once each week for two consecutive weeks with a notice of the time and place when the commission or the city auditor will meet to hear objections. At the hearing, the commission or the city auditor may make alterations in assessments. Any person still aggrieved after consideration by the commission or city auditor may appeal to the city governing body by filing a written notice of appeal.

At the meeting of the city governing body, any person who has appealed may appear and present reasons why the action of the commission should not be approved. The governing body of the city may increase or diminish any assessment as it deems just. The assessment list must then be approved by the governing body.

Collection of Special Assessments

A special assessment is a lien against the property on which it is levied. Special assessments are generally payable in annual installments, which for most projects may be extended for up to 30 years. Annual installments of assessments must be certified by the city auditor to the county auditor annually for collection with property tax collections.

North Dakota Supreme Court decisions have concluded it is not the province of the court to substitute its judgment for that of the commission making the assessment, but merely to determine whether the commission was within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably and to determine whether there is substantial evidence to support or justify the determination.

Agricultural Property Tax Issues

The study directive from House Bill No. 1322 (2011) includes examination of agricultural property tax classification and assessment issues, with emphasis on these issues within and near city boundaries. Under current law, there is no effect on agricultural property tax assessment from being located within and near city boundaries. However, agricultural land located within a city may be subjected to special assessments, and that situation was the source of complaints to legislators. If agricultural property is assessed benefits based on its market value increase or a square-footage basis, the owner is likely to be unhappy with the result. The special assessment commission may be considering the improvement to increase the value of the property for commercial or residential development, but the owner may have no interest in any use of the property except farming. House Bill No. 1322 amended Section 40-26-01 to provide that if an action challenges the determination of benefits and special assessments imposed for agricultural property, the decision of the special assessment commission regarding agricultural property is not entitled to deference by the court, and the court is to consider the determination of benefits and special assessments imposed for agricultural property de novo.

Financing by special assessments provides several advantages over funding of improvements by property developers or property owners. For cities or other political subdivisions, the advantages of improvements through special taxing districts include direct control of specifications and execution of the project, accelerated completion of improvements, transfer of funding of projects to the private sector to preserve debt capacity and property tax authority of the jurisdiction, better quality and improved uniformity of public improvements, and allowing new growth to pay its own cost of infrastructure development. For developers, special taxing districts avoid tying up developers' equity and time in infrastructure development; avoid possible recourse against the developers during the 20 years or 30 years the indebtedness is outstanding; reduce borrowing costs

because bonds are tax-exempt; and allow for higher returns to the developers or lower sales prices for property, or both. For property buyers, special taxing districts provide the advantages of construction of improvements under control of the city, faster completion of public improvements, higher quality and improved uniformity of public improvements, and reduced combined costs of property ownership.

Several alternatives to traditional funding through special taxing districts have been developed in other states. Some of these options are available to North Dakota cities or other political subdivisions. The committee examined use of these options in other states. Only the methods not used in North Dakota are discussed in the following paragraphs under this subheading.

In some states, cities are allowed to impose impact or development fees against property developers to cover the cost of infrastructure improvements. The presumption is the developer will pass the impact or development fee cost along to property buyers. This approach is viewed generally as undesirable because the property buyer ends up financing the cost of infrastructure improvements, usually at a higher rate of interest than is available through public financing. In addition, impact fees are viewed as restrictive on development because they increase the developer's risk. This is viewed as particularly detrimental during slow housing markets and economic recessions.

A special district may be established in some states to provide a specific public service, such as water, fire protection, police protection, or flood control. A special district is not a part of the city or county and is a legally separate entity. The perceived advantage of special districts is they allow charges to be imposed directly against those who benefit from the service provided, which supposedly allows a better quality or range of services at a price consumers are willing to pay. Special districts may be viewed as an inequitable financing method. Poorer neighborhoods are not likely to benefit from special districts because residents are unwilling or cannot afford to pay for enhanced public services.

Community development authorities are quasi-governmental entities created under law in some states. These entities are given the right to issue tax-exempt debt to fund infrastructure. It appears the objective of these entities is to allow a developer to establish the authority and issue tax-exempt debt. A tax surcharge is added to homes within the established district. The concept is intended to provide lower costs through tax-exempt borrowing and eliminate the need to add infrastructure costs or impact fees to the price of a home. Available information indicates these authorities are costly to establish and limited to very large-scale developers.

In traditional development, the design and construction portions of projects are entirely separate. Under the design-build approach, design and construction are performed by the same entity. An additional variation is a design-build-operate project. The intended benefit of the design-build approach is to minimize costs by giving bidders an incentive to be efficient in design and construction and use advanced technology. The savings are intended to be passed on to the community through lower costs, better services, and less financial impact for property buyers.

State revolving fund programs provide loans to political subdivisions at reduced cost, and loan repayments go back into the fund to allow funding for additional projects. Funds for some purposes, notably water projects, are provided from federal government grants and state matching funds. Federal funding to these programs has declined since 2002.

Grant anticipation revenue vehicle (GARVEE) bonds allow states to pledge a portion of future federal highway funding toward repayment of indebtedness. A qualifying project must be preapproved by the Federal Highway Administration as a federal aid debt-financed project. The benefit of GARVEE bond funding is to allow faster implementation of certain highway construction projects. However, obligating future federal funding necessarily restricts choices on future use of those revenues. A further risk is whether federal revenue allocations will be reauthorized or continued.

Privatization describes performance of traditional public services, such as education, libraries, water treatment and supply, roads and bridges, public transportation, law enforcement, fire protection, and similar services, through competitive contracting with private operators. These agreements generally require the infrastructure already be in existence and in ownership of the political subdivision. Contracts are of a limited duration to retain cost control through the competitive bidding process.

A related innovation is asset sale of public infrastructure to a private entity. Sale of an asset, such as a water distribution system, can relieve the political subdivision of the burden of maintaining the system and produce an infusion of cash. However, there is often political resistance to transferring a traditionally public function to the private sector.

A public-private partnership describes contractual arrangements in which a private sector entity is required to design, finance, build, and perhaps operate public infrastructure or facilities. The attraction of such arrangements may include reduced cost of services to the public, reduced payroll and other costs for the political subdivision, and avoidance of debt limit and voter approval issues. Some observers estimate private sector construction costs may be 10 to 30 percent lower than public sector construction costs and private sector projects can be built in a much shorter timeframe.

Committee Deliberations

The North Dakota Association of Builders expressed support for use of special assessments as a tool very important to developers of property and to cities. Special assessments allow growth to occur in times when banks will not finance property development. Cities may require property developers to put up an initial funding commitment or promissory note before initiating a development project through special assessments. In times of rapid economic growth, special assessment financing of infrastructure development assists property developers to meet increased needs for development of residential and commercial property.

The committee did not receive testimony in opposition to use of special assessments. Dissatisfaction from property owners which committee members have heard appears to be related to assessment of benefits against individual property, the size of the assessment district decided for a special assessment project, or other issues within the discretion of local government bodies.

Conclusion

The committee makes no recommendation as a result of its studies of special assessments.

CORPORATE INCOME TAX STUDY

Corporate income taxes were first imposed in North Dakota in 1919, with the imposition of a flat rate tax of 3 percent on total net income of corporations. In 1937 a graduated corporate income tax rate structure was created. The highest rate--6 percent--was applied to corporate income exceeding $15,000 per year. In 1978 an initiated measure was approved by the voters to add a rate of 8.5 percent for corporate taxable income exceeding $25,000. In 1981 the highest corporate income tax rate was reduced to 7 percent for income exceeding $50,000 per year. In 1983 the highest corporate income tax rate was increased to 10.5 percent.

Legislation in 2003 began a trend to lower corporate income tax rates and reduced the highest corporate income tax rate to 7 percent. In 2007 the highest corporate income tax rate was reduced to 6.5 percent. In 2009 the highest corporate income tax rate was reduced to 6.4 percent. In 2011 the highest corporate income tax rate was reduced to 5.15 percent.

Taxable Income of Corporations

The North Dakota corporate income tax applies only to the portion of a corporation's federal taxable income that is derived from sources within North Dakota. A corporation that conducts business only within North Dakota uses its federal taxable income as its North Dakota taxable income. A corporation that conducts business inside and outside North Dakota must apportion its federal taxable income to determine the portion that is attributable to sources within North Dakota. The apportionment factor is a percentage that is the average of North Dakota property, payroll, and sales compared to the corporation's multistate or multinational total property, payroll, and sales. Under North Dakota law, the corporate property, payroll, and sales factors are equally weighted. Corporate income apportionment formulas are used by all states imposing corporate income taxes and have been adjusted by some states to provide unequal weighting among factors in efforts to encourage businesses to locate in the state or to provide favorable tax treatment for businesses already located in the state.

Combined Reporting Requirements

A corporation that is part of a unitary business involving one or more corporations, including consideration of operations outside the United States, must file using the combined reporting method. A "unitary business" is a group of corporations carrying on activities that transfer value among themselves through the unities of ownership, operation, and use. Unity of ownership means the group is under the common control of a single corporation, which is also a member of the group. Control exists when the controlling corporation directly or indirectly owns more than 50 percent of the voting stock of a controlled corporation. Unity of operation means the group receives benefits from functional integration or economies of scale. Unity of use means the group of corporations contributes to or receives benefits from centralized management and policy formulation. When unity of ownership exists, there is a presumption that the corporations are engaged in a unitary business if all activities of the group are in the same general line or type of business, activities of the group constitute different steps in a vertically structured enterprise, or the group is characterized by centralized management.

Water's Edge Election

A corporation required to file its North Dakota return using the worldwide unitary combined reporting method may elect under Chapter 57-38.4 to use the "water's edge" method. This election allows exclusion of consideration of most corporate income sourced outside the United States. The water's edge election must be made on the return as originally filed and is binding on the corporation for five consecutive years. If the election is made for taxable years beginning before 2004, the corporation may not use the deduction for federal income taxes paid. If the election is made for taxable years beginning after 2003, the corporation is subject to an additional tax of 3.5 percent of taxable income.

2011 Corporate Income Tax Legislation

House Bill No. 1047 reduced corporate income tax rates by approximately 19.5 percent, resulting in an anticipated reduction in state general fund revenues of approximately $25 million for the 2011-13 biennium. Because corporate income tax collections exceed projections by 220 percent at this point in the biennium, the reduction has not received much attention. The bill also reduced individual income tax rates by 17.9 percent, which was estimated to reduce state general fund revenues $120 million for the 2011-13 biennium. Individual income tax collections at this point in the biennium exceed projections by over 50 percent, so the rate reduction has not prevented a revenue increase.

Senate Bill No. 2210 established a housing incentive fund and created individual and corporate income tax credits for contributions to the fund. The credit allowed is equal to the amount of the contribution to the housing incentive fund. A taxpayer must spread the credit over at least 5 taxable years and use it within 10 years. The tax credits for all contributors are limited to $4 million per biennium.

Senate Bill No. 2057 created a corporate and individual income tax credit for purchasing manufacturing machinery and equipment to automate manufacturing processes. The credit is 20 percent of costs incurred, and the credits allowed for all taxpayers are limited to $2 million per year.

House Bill No. 1057 changed the angel fund investment credit for corporate and individual income

taxpayers to allow passthrough entities to qualify, allow credits to be transferred, and limit aggregate lifetime credits for angel fund investors to $150,000. The bill increased reporting for investments and angel fund information on each investor in the angel fund showing the name, address, Social Security number or employer identification number, amount of investment, and date of investment. For tax years 2011 and 2012, a taxpayer may elect to sell, transfer, or assign an angel fund investment tax credit subject to certain conditions and limited to $100,000 of transfers over any combination of taxable years.

Committee Deliberations

The committee reviewed the Business Activity Tax Simplification Act considered by Congress, weighting of corporate apportionment factors for North Dakota and surrounding states, and data on where corporate income falls with tax rate brackets. The committee examined the increasing income and the apportionment factors for oil companies having increased property, payroll, and sales in North Dakota.

Apportionment percentages for North Dakota for oil exploration and production corporations have on the average increased from 0.92 percent in 2007 to 1.60 percent in 2009. As a result of this and rapid income growth, oil and gas-related corporate income apportioned to North Dakota increased from $85.4 million in 2007 to $152 million in 2009. More substantial increases have probably occurred since 2009, but more recent information is not available at this time.

Conclusion

The committee makes no recommendation as a result of its study of corporate income tax.

SALES TAX EXEMPTIONS STUDY

The committee was assigned two studies relating to sales tax exemptions. The study directives provided for consideration of these issues:

- Exemption of purchases by charitable nonprofit organizations;
- Fiscal impact of each existing sales tax exemption and benefits to the state economy;
- How much benefit of each exemption goes to out-of-state concerns; and
- Exemption of purchases by health-related clinics.

Background

Sales tax exemptions have existed since the sales tax was created in 1935. The committee reviewed the history and estimated fiscal impact of each sales tax exemption. Retail sale of products that are subjected to a special tax, such as sales of gasoline, coal, electricity, and natural gas, are exempt from sales tax. Sale of services is generally exempt from sales taxes. Among the most significant negative revenue impacts of exemptions are the exemptions for medical goods and services, agricultural inputs, grocery foods, oil and gas field services, and construction services. Total estimated revenue reduction from the existence of sales and use tax exemptions is estimated to be between $582 million and $767 million per biennium.

Committee Deliberations

Committee members considered the sales tax exemption for Montana residents and the sales tax refund for Canadian residents. The combined fiscal effect of these provisions is a revenue loss of approximately $3 million per biennium. Committee members said they have received comments of strong support for these provisions from retailers in western and eastern North Dakota for continuation of the exemption and refund provisions. The committee received no suggestions for changes to any sales tax exemption.

Conclusion

The committee makes no recommendation regarding its study of sales tax exemptions.

CIGARETTE TAX STAMP STUDY

Background

Tobacco tax stamps were required by law on cigarette packages from the time of the enactment of the tobacco tax in 1925 until the tobacco tax stamp requirement was eliminated in 1991. Since 1991 three bills have been introduced in the Legislative Assembly which would have reinstated the requirements for the use of tobacco tax stamps, but the provisions requiring the use of tobacco tax stamps were removed from each bill.

Committee Deliberations

Representatives of two cigarette manufacturing companies urged the state of North Dakota to require tax stamps on cigarettes to combat trade in contraband cigarettes. The representatives pointed out North Dakota is one of only three states that do not require tax stamps on cigarettes.

The committee received testimony from several tobacco distributors doing business in North Dakota. All of the distributors expressed opposition to the requirement of tax stamping for retail sales in North Dakota. Some of these distributors do cigarette tax stamping because they make sales to retailers in states that require tax stamps. The primary objection of distributors in North Dakota is there would be a substantial cost to distributors to obtain the cigarette tax stamping equipment and provide the staff to operate the machinery. The cost of a new cigarette tax stamping machine was estimated at $140,000 to $150,000. A reconditioned used cigarette tax stamping machine might be possible to obtain at a cost of approximately $80,000. In addition to machinery cost, it was estimated that a minimum of four people would have to be trained and paid to operate the machine. Distributors said all of these costs would be imposed on them and could not be recovered through price increases.

The Tax Department estimated the cost to the state of purchasing tax stamps for cigarettes to be approximately $1 million to $1.45 million for a biennium. The Tax Department reported during audits of tobacco taxes the department has found very little evidence of trade in contraband on untaxed cigarettes.

One cigarette manufacturer urged use of wax-based state excise tax stamps for cigarettes. The Center for Tobacco Prevention and Control Policy recommended use of high-tech stamps containing encrypted information that can be read with portable scanners. The committee found no evidence encrypted stamps provide a significant impact in reducing contraband cigarette sales. The committee found requiring use of tax stamps for cigarettes would be a significant cost to the state and a significant cost to distributors doing business in the state. The committee found no evidence of a benefit to the state that would offset these added costs.

Conclusion

The committee makes no recommendation regarding its study of cigarette tax stamps.

OIL EXTRACTION TAX STUDY

The Chairman of the Legislative Management assigned to the committee an additional study of feasibility and desirability of oil extraction tax rate reductions and elimination of selected exemptions, which would take effect as certain levels of increased production and revenue.

Background

The state imposes two separate taxes for oil production. The oil and gas gross production tax is imposed at a rate of 5 percent. The oil extraction tax is imposed at a rate of 6.5 percent and contains several exemptions and rate reductions that do not exist under the gross production tax. The study assignment did not include committee consideration of the gross production tax.

The study directive was based on proposed amendments offered to Engrossed House Bill No. 1467 during the 2011 legislative session. Those amendments would have provided for gradual reduction of the oil extraction tax as statewide oil production increases. The proposed amendments would have provided for immediate elimination of most existing extraction tax exemptions and a substantial change to the stripper well exemption. The 6.5 percent oil tax extraction tax rate would have been reduced by one-half percentage point when statewide daily production reaches 425,000 barrels per day, 500,000 barrels per day, 575,000 barrels per day, 650,000 barrels per day, and 700,000 barrels per day. At statewide daily production of 700,000 barrels per day, the extraction tax rate would be 4 percent and would remain at that rate. At the 425,000 barrels per day production level, the stripper well exemption would not apply to new wells drilled on a Bakken pool stripper well property until production from that well declines to a level that meets the statutory requirements for an individual stripper well. North Dakota oil production recently surpassed 700,000 barrels per day, which would have triggered all of the rate reductions under the proposal if it had been enacted.

Committee Deliberations

The committee examined the oil and gas gross production tax and the oil extraction tax. Allocation of revenues from each tax is for very different purposes, but the allocations have been structured to be complementary and achieve the desired balance of allocation for affected local governments and the state. In consideration of changes to oil extraction tax rates and exemptions, the committee recognized any such changes would necessarily involve consideration of how all oil tax revenues are to be allocated. Allocation of oil tax revenues would require consideration of adjustments to the gross production tax, which was not included in the study directive. The committee concluded any adjustment of oil extraction tax rates and exemptions should be as part of legislation involving both the gross production and the extraction tax.

Conclusion

The committee makes no recommendation regarding its study of the oil extraction tax.

TRANSPORTATION COMMITTEE

The Transportation Committee was assigned two studies. Section 1 of 2011 House Bill No. 1442 directed a study of the regulation of drivers and motor vehicles in the North Dakota Century Code (NDCC) for consistency, clarity, and substance. House Concurrent Resolution No. 3032 directed a study of needs of, economic values of, and methods to improve access roadways to recreational, tourist, and historical sites in this state.

In addition, the Legislative Management assigned to the committee the responsibility under NDCC Section 57-40.6-12 to receive a report from the Emergency Services Communications Coordinating Committee 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.

The committee members were Senators Gary A. Lee (Chairman), Ron Carlisle, Karen K. Krebsbach, Richard Marcellais, Dave Nething, George L. Nodland, David O'Connell, and Terry M. Wanzek and Representatives Robert Frantsvog, Ed Gruchalla, Brenda Heller, Bob Hunskor, Karen Karls, Jerry Kelsh, Matthew M. Klein, William E. Kretschmar, Mark S. Owens, Dan Ruby, and Don Vigesaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

DRIVERS AND MOTOR VEHICLES STUDY

House Bill No. 1442 directed a study of the regulation of drivers and motor vehicles in the Century Code for consistency, clarity, and substance. As introduced, House Bill No. 1442 would have required an inspection certificate from the Department of Transportation or the Highway Patrol for all modifications to a motor vehicle's suspension, steering, or braking systems. The legislative history reveals the impetus for the bill came from a Minot law enforcement officer's concern with a pickup that slightly exceeded the weight limit of 7,000 pounds and had a raised body that raised the bumper above the maximum allowable bumper height of 27 inches. The main opposition to the bill came from car clubs and street rod groups. The opponents said the changes in the law would affect the operation of the modified vehicles that car club and street rod group members operate.

Testimony reveals prohibitions against special motor vehicles contained in North Dakota Administrative Code (NDAC) Section 37-12-02-01 could not be enforced against the particular pickup in question, unless adopted as a municipal ordinance. On the state level, it was explained the special motor vehicle rules were for use when the Highway Patrol inspects a vehicle and are not for application against a vehicle that is in operation. In short, the interplay of administrative rules and statutory provisions created uncertainty in the application of the law. As a result, the bill was amended to provide for this study.

Previous Studies of NDCC Title 39

In general, the study requires review of NDCC Title 39 with some exceptions. During the last 10 years, interim committees have studied a number of areas relating to Title 39. The committee reviewed previous studies to narrow the area of the current study.

During the 2001-02 interim, the Judiciary B Committee conducted two relevant studies. The committee studied the fees and point demerits for traffic offenses and studied the feasibility and desirability of a centralized process for administering noncriminal traffic violations. In the fees and points study, the committee focused on speeding and recommended bill drafts relating to speed limits and the fees for violating the limits. As to the study of the centralized process for administering noncriminal traffic violations, the committee studied the process at the city and county levels before information is transmitted to the Department of Transportation. The committee focused on the complicated procedures contained in NDCC Sections 39-06.1-02, 39-06.1-03, and 39-06.1-04.

During the 2003-04 interim, the Transportation Committee conducted three relevant studies. As part of a study of motor vehicle insurance, the committee reviewed NDCC Chapter 39-16.1. Although Chapter 39-16 was not reviewed in much detail, Chapters 39-16.1 and 39-16 work in concert. The purpose of these two chapters is to protect innocent victims of motor vehicle accidents from financial disaster. Both chapters apply to a motor vehicle owner who has had an accident or has been convicted of certain traffic offenses. Sanctions imposed by Chapter 39-16 are intended to guarantee financial responsibility for a first accident. In contrast, the sanctions imposed by Chapter 39-16.1 are designed to establish proof of financial responsibility for future accidents.

The 2003-04 interim committee also studied the alternative methods for recording and discharging a lien on a motor vehicle. The committee reviewed and recommended revision of portions of NDCC Chapter 39-05 as part of the creation of an electronic lien notification procedure.

The 2003-04 interim committee also studied the requirements for the registration and licensing of snowmobiles and all-terrain vehicles and the licensing of motorcycle and low-speed vehicle dealers. Although the committee made no recommendation regarding that study, the committee did review the provisions of law relating to these types of vehicles.

During the 2005-06 interim, the Transportation Committee studied the effectiveness of financial responsibility requirements imposed on individuals convicted of driving without liability insurance. The committee reviewed the provisions of NDCC Chapters 39-16.1 and 39-16.

During the 2007-08 interim, the Transportation Committee studied exemptions from Federal Motor Carrier Safety Regulations. As part of this study, the committee reviewed NDCC Chapter 39-06.2, Commercial Driver's Licenses, which is intended to implement federal law. In addition, under Section 39-21-46 the Superintendent of the Highway Patrol must adopt rules duplicate to or consistent with current Federal Motor Carrier Safety Regulations. The committee reviewed the allowable exceptions from these regulations.

During the 2009-10 interim, the Public Safety and Transportation Committee studied highway construction funding and focused on overweight vehicles. The committee recommended two bills relating to overweight vehicles--2011 House Bill No. 1042 and 2011 Senate Bill No. 2044. House Bill No. 1042, which did not pass, would have allocated extraordinary road use fee collections for deposit 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, as introduced, would have provided that a violation of an overweight vehicle permit issued under a county home rule ordinance is considered a violation of state law. As passed, the bill clarified that overweight permit fees for permits issued by local authorities go to the local authority, and the citation fees for a violation of a permit issued by a local authority are for a violation of state law. As part of this study, the committee reviewed portions of NDCC Chapter 39-12.

Current Study

The committee reviewed NDCC Title 39 to narrow the area of study. In particular, the committee considered disregarding chapters that did not directly relate to motor vehicles or drivers of motor vehicles. These chapters include 39-03--Highway Patrol; 39-03.1--Highway Patrolmen's Retirement System; 39-04.2--Public Transportation; 39-10.1--Bicycles; 39-13--Traffic Signs; 39-16.2--Gas Transporter Financial Responsibility; 39-18--Mobile Home Dealer Regulation; 39-19--Reciprocity Agreements, Arrangements, or Declarations; 39-22--Motor Vehicle Dealers; 39-22.1--Trailer Dealer's Licensing and Bonding; 39-22.3--Motor-Powered Recreational Vehicle Dealers; 39-25--Regulation of Commercial Driver Training; 39-26--Abandoned Motor Vehicles; 39-28--Motorcycle Safety Education; 39-30--Motor Vehicle Chop Shops; 39-31--Common Household Goods Carriers; and 39-33--Driver and Motor Vehicle Record Privacy.

A number of chapters that relate to motor vehicles and drivers are of lesser importance. This may be because the chapter has a more remote relation to the act of driving a motor vehicle than other chapters; the chapter or a portion of the chapter has been thoroughly studied recently by an interim committee and may be in less need of review; or the chapter is insular and, as such, does not interrelate with other chapters usually because of federal requirements. Because of these reasons, the committee considered disregarding NDCC Chapters 39-05--Title Registration; 39-06.1--Disposition of Traffic Offenses; 39-06.2--Commercial Driver's Licenses; 39-16--Financial Responsibility of Owners and Operators; 39-16.1--Proof of Financial Responsibility for the Future; and 39-32--Intrastate Commercial Driver Hours of Service.

A number of chapters relate to vehicles other than automobiles. Other than motorcycles, these vehicles are subject to special provisions and are exempt from major portions of NDCC Title 39. Most of these vehicles have been studied in the past. Because of these reasons, the committee considered disregarding Chapters 39-10.2--Motorcycles; 39-10.3--Experimental Vehicles; 39-24--Regulation and Registration of Snowmobiles; 39-27--Motorcycle Equipment; 39-29--Off-Highway Vehicles; 39-29.1--Low-Speed Vehicles; and 39-29.2--Unconventional Vehicles.

Testimony and Discussion

Committee discussion included the changes should not be piecemeal, and the committee should contract with a consultant to review the entire title. The discussion also included, however, that the committee, rather than a consultant, should review the title. Discussion included a complete rewrite of the entire title would be too much for the committee to do in one interim, and the committee needed to focus on certain areas. It was suggested the Highway Patrol and the Department of Transportation should create a working group with local law enforcement to bring recommendations to the committee relating to the study of drivers and motor vehicles. It was suggested the Highway Patrol and the Department of Transportation should review the title and provide suggested cleanup language. It was argued the committee should focus on the suggestions and the original topic of the bill--modified motor vehicles. In addition, committee discussion included the committee should compare the Century Code with the North Dakota Administrative Code to determine consistency.

The committee received testimony on which chapters to study as well. The Department of Transportation recommended studying:

- Title and registration issues.
- General language cleanup.
- Operator's license fees.
- Driver's record privacy.
- Issues related to size and weight of heavy vehicles.

The Highway Patrol recommended studying ways to streamline the permit issuance process. One way to streamline the process is flat fees. The committee was informed the Highway Patrol supports flat fees. The committee was informed ton-mile fees are complicated and confusing, and the committee may wish to consider annual fees over numerous permits. One benefit of the flat fees is flat fees would make it easier for the industry, if the political subdivisions and the state coordinated with permits. The committee was informed Colorado has a model for a flat fee for a whole company. Although a flat fee would streamline the process by removing the pressure on the permit section of the Highway Patrol, there still would need to be a routing component.

The committee was informed much of the permitting is for 10 percent overweight permits, and the 10 percent overweight permit could be removed by adding a fee to registration. Because the 10 percent permits are allowed for so many months out of the year, it was argued permits may not make administrative sense. Because the purpose of the fee is to maintain roads, a registration fee would meet the purpose without the administration of the permit.

Representatives of law enforcement recommended statutory fees should be increased. The committee was informed the issuance of a ticket takes approximately 15 minutes and costs law enforcement approximately $79 in salary and overhead.

NDCC Chapter 39-06 Bill Draft

The committee considered a bill draft to improve the consistency and clarity of NDCC Chapter 39-06 on operator's licenses and provide for fee consolidation. The sole purpose for the fee schedule was to consolidate the fees in the chapter, and no fee amounts were changed. The bill draft was meant to provide improvement without substantive changes.

The committee considered a second version of the bill draft for purposes of improving the consistency and clarity of the chapter. All of the changes made to the first draft were to improve clarity. An example of the type of change made in the second draft was to change "impose" to "reimpose".

Commercial Driver's License Fees Bill Draft

The committee considered a bill draft to consolidate the fees for commercial driver's licenses. The bill draft consolidated the fees and clarified the language in sections that provide for fees. The Department of Transportation requested the bill draft and supported it before the committee.

The committee was informed that after 30 days of being in this state and becoming a North Dakota resident, a person with a commercial driver's license needs a North Dakota license. Unless a person is stopped and law enforcement has reason to believe that person is living in this state, it is difficult to enforce the North Dakota commercial driver's license requirement. However, the committee was informed the increase in the number of commercial driver's licenses in this state shows a good level of compliance.

The committee was informed the Department of Transportation will not push for increased fees when there is a budget surplus unless the Legislative Assembly directs an increase in fees. However, the department incurs a "loss" of $3 on average for the issuance of each license. Committee discussion included the fees for licenses are low, and each license fee should be raised at least $5 and up to 3.5 times based on inflation.

The committee considered a second version of the bill draft to consolidate the fees for commercial driver's licenses. The bill draft contained further changes to improve the consistency and clarity. Examples of the changes made in the second bill draft include changing "this or another" to "a" and replacing "person" with "individual".

Number Plates Destruction Bill Draft

The committee considered a bill draft to provide for the destruction of license plates for driving while under the influence and driving under suspension or revocation, instead of impoundment. The Department of Transportation requested the bill draft and supported it before the committee.

Destruction is preferred to impoundment because impoundment creates a storage issue with the Department of Transportation, and impounded plates are rarely requested to be returned. The committee was informed usually a person who has a plate impounded gives the vehicle to a family member, and the credit for registration goes to that family member. There is a provision of law for the impoundment of a number plate for driving without liability insurance; but in this instance, impoundment was kept because the impoundment could be for a very short duration.

The Department of Transportation has 46 boxes of impounded plates, and if the bill draft becomes law, the plates will be sent to Roughrider Industries to be recycled. If a license plate is destroyed and not used for three years and one month, the plate number may be used by another citizen. The numbers on the plates that have been impounded will never be reused.

The Department of Transportation recommended a change in the language of the bill draft so that the court would communicate to the department that a plate has been destroyed. As a result, the committee considered a second version of the bill draft. The only change in the second bill draft was to add a notification to the department.

During review of the bill draft, the committee discovered the use of the term "sheriff" for the person that destroys the number plates for driving while under suspension or revocation and the term "police officer" for the destruction of number plates for driving while under the influence. The committee included an amendment of NDCC Section 39-06-42(4) to provide that a city, may by ordinance, authorize its municipal judge to order destruction of motor vehicle number plates by the office of the police officer that made the arrest in the manner provided in subsection 3. Under the definitions under Section 39-01-01, a police officer is anyone who enforces traffic laws. With the amendment, the court would give the plate to the sheriff with respect to a city that contracts with the sheriff for law enforcement.

Certificate of Title for Out-of-State Vehicles Bill Draft

The committee considered a bill draft to prohibit the Department of Transportation from issuing a certificate of title or transferring a certificate of title to an out-of-state vehicle with a marked title. A marked title includes a certificate of destruction or a notation on the title that the vehicle is scrapped, parts-only, junk, unrepairable, not rebuildable, a dismantler, or any other similar notation. The bill draft was based on 2011 Senate Bill No. 2076.

The committee was informed the Department of Transportation requested introduction of Senate Bill No. 2076 because a national database was being built, and each state is required to check the database to see if a vehicle is not roadworthy in another state. The committee was informed last legislative session a legislator wanted a system in place so a person could fix a vehicle from another state and have the vehicle inspected and placed back on the road. The committee was informed there is liability on the state with an inspection if the inspection cannot ensure the vehicle has not suffered flood damage or the airbags have not been deployed. In addition, North Dakota could become a harbor for flooded vehicles if there were an exception. The department requested the bill draft and supported it before the committee.

Committee discussion included that an exception for out-of-state vehicles would be dangerous because it is too difficult to determine whether a vehicle that has been flooded is safe. The committee was informed some states require flooded vehicles to be crushed.

Registration Plan and Systems Bill Draft

The committee considered a bill draft to make technical corrections to the International Registration Plan, the Unified Carrier Registration System, and the Single State Insurance Registration System. The Department of Transportation requested the bill draft and supported it before the committee.

In the bill draft, the language added last legislative session to NDCC Section 39-05-02.2(4) was added to Section 39-05-03 because this language should have been added last session. The changes to Sections 39-19-06 and 39-19-06.1 are made because the Single State Insurance Registration System has been replaced by the Unified Carrier Registration Plan. In addition, the registration system for motor carriers authorized under federal law no longer exists and has been replaced by the Unified Carrier Registration Plan.

Class III Off-Highway Vehicle Bill Draft

The committee considered a bill draft to define a Class III off-highway vehicle to include Argos and SnoBears. The Department of Transportation requested the bill draft and supported it before the committee. The changes will allow the department to title and register some unconventional vehicles.

The committee considered a second version of the bill draft to make additional changes recommended by the Department of Transportation and the Parks and Recreation Department. As recommended by the Parks and Recreation Department, the definition of snowmobile in NDCC Section 39-24-01 was changed so that SnoBears cannot be registered as snowmobiles and thus cannot operate on a snowmobile trail.

Traffic Offenses, Fees, and Points Bill Draft

The committee considered a bill draft to improve the consistency and clarity in NDCC Chapter 39-06.1, which relates to the disposition of traffic offenses, fees, and points for traffic offenses. An example of the type of change is eliminating "fair" from the term "fair preponderance of the evidence".

It was argued the term "halting officer" should be changed to peace officer instead of police officer, and peace officer should be defined as in NDCC Section 12-63-02. To the contrary, the committee was informed police officer is defined in Title 39 and as a defined term is being used in rewriting Title 39 chapters for consistency and clarity. In addition, peace officer may not include out-of-state officers, federal officers, emergency situations, and martial law situations. The committee was informed it would be a large project to make the terms peace officer, police officer, and law enforcement officer consistent throughout the Century Code.

Committee discussion included fees for traffic offenses should be increased to include the cost of issuing the citation. To the contrary, discussion included the fees should be based on deterrence. The committee did not change fees in the bill draft because of the concern any fee change would place the bill draft at risk. The consensus of the committee was fee amounts merit a stand-alone discussion.

The committee considered a second version of the bill draft to improve the consistency and clarity in NDCC Chapter 39-06.1 which included additional amendments to improve clarity. An example of the type of change in the second bill draft to improve clarity was to replace "pursuant to either" with "under", and an example to improve consistency was to replace "restricted license" with "temporary restricted license".

Speeding Fees Bill Draft

In 1973 this state changed from a criminal to a noncriminal system of enforcing most traffic offenses. However, criminal dispositions were retained for certain severe offenses. In 1973 these offenses were:

1. Driving while under the influence of intoxicating liquor or narcotic drugs;
2. Operating while a habitual user of narcotic drugs;
3. Reckless driving or aggravated reckless driving;
4. Negligent homicide;
5. Manslaughter resulting from the operation of a motor vehicle;
6. Hit-and-run offenses;
7. Driving while license or driving privilege is suspended or revoked; and
8. Drunken or reckless driving of a snowmobile.

Since that time, the list contained in NDCC Section 39-06.1-05 has expanded to include unlawfully modifying a motor vehicle, driving without liability insurance, driving an unsafe vehicle such as to endanger another person, and causing an accident with an emergency or department maintenance vehicle. In addition, other criminal offenses, e.g., altering an odometer, have been added to the law with disregard to the convention of listing the offense in Section 39-06.1-05.

The noncriminal point and fee system has expanded greatly since 1973. For example, initially there was a list of 18 offenses for which demerit points were assigned for noncriminal offenses and 6 offenses for criminal offenses. Under NDCC Section 39-06.1-10(3), the

present point list assigns points to 36 noncriminal traffic offenses and 14 criminal offenses.

Under NDCC Section 39-06.1-10(1), if the number of points assigned to a violation is not more than two, the violation and the points may not be entered on the driving record but must be recorded separately. This separate record is not available to the public and thus is not reported to the operator's insurance company or anyone else. However, these points do apply for the purposes of license suspension. Under Section 39-06.1-10(2), an operator's license is suspended if an operator accumulates 12 or more points. Under Section 39-06-01.1, acts committed by a minor resulting in an accumulated point total in excess of five points will result in having that minor's license canceled by the Department of Transportation. The committee reviewed traffic offenses that have more than two demerit points assigned for a violation. The committee also reviewed traffic offenses for which no more than two demerit points are assigned. The committee reviewed demerit points for speeding separately.

Testimony included a recommendation the demerit point system be reviewed because drivers do not understand the point system very well. It was argued an alternative method of suspending licenses for multiple offenses should be adopted instead of demerit points. Committee discussion included the committee should look at the points at the same time as looking at the fees because the deterrence created by points is at least that of the deterrence created by fees.

The committee was informed multiple offenses under two points are not reported to an insurance company. Committee discussion included the point system does not seem to improve behavior if a person can run a red light five times and not have any increase in insurance rates. It was argued if all two-point offenses were raised to three points, insurance companies would be notified and the behavior would be affected. In addition, it was argued points do not affect out-of-state drivers because the points do not transfer to other states. The committee was informed most states do not have a point system. It was argued the point system is not a deterrent or equitable.

In 1973 offenses were divided between moving and nonmoving. The only fees were $10 for a nonmoving violation, $20 for a moving violation, and $30 for careless driving. Presently, the general rule is moving and nonmoving violations are $20. Various exceptions have been made to this rule, and the committee reviewed these exceptions. The committee reviewed speeding fees separately.

The following table is of speeding fees in this and surrounding states. Other states have criminal systems, and fees are set by court schedules. The table is a combination of tables from other states and does not take into account variation in fees due to local jurisdictions and place in criminal process.

	North Dakota			South Dakota	Nebraska	Iowa	Wyoming			Montana	Minnesota
MPH Over Limit	**55 MPH and Lower Zones**	**65 MPH Zone**	**70 and 75 MPH Zones**	**All Streets and Roadways (Fine/Total)**		**All Zones (Fine/Total)**	**Urban District**	**Primary and Secondary Highways**	**Interstate**	**Highways**	**All MPH Zones in Fourth Judicial District (Fine/Total)**
1-5	$5	$2-$10	$5-$25	$19/$85		$20/$87	$55-$65	$5-$25	$5-$25	$20	$67/$145
6-10	$6-$10	$12-$20	$30-$50	$39/$105	$10	$40/$114	$94-$110	$68-$80	$95-$115	$20	$67/$145
11-15	$11-$15	$25-$50	$55-$75	$59/$125	$25	$80/$168	$114-$130	$83-$95	$120-$160	$40	$67/$145
16-20	$17-$25	$55-$75	$80-$100	$79/$145	$75	$90/$181.50	$134-$150	$98-$110	$170-$210	$40	$67/$145
21-25	$28-$40	$80-$100	$105-$125	$99/$165	$125	$100/$195 + $5 for each mph over 20 mph	$154-$170	$113-$125	$240	$70	$134/$212*
26-30	$43-$55	$105-$125	$110-$150	$154/$220	$200		$240	$128-$140	$240	$70	$134/$212*
31-35	$58-$70	$130-$150	$155-$175	$154/$220	$200		$240	$143-$155	$240	$100	
36-45	$73-$100							$158-$170			
36+		$155 + $5 for each mph over 45 mph over limit	$180 + $5 for each mph over 45 mph over limit	$154/$220	$300		$240		$240	$100	$134/$212*
46+	$101 + $5 for each mph over 45 mph over limit							$173 + $3			
							$90 fees after 5 mph over added to total	$65 fees after 5 mph over added to total	$40 fees after 5 mph over added to total		*Surcharge of $67 for 20 or more mph over limit for libraries, and local surcharge added

Committee discussion included speeding offenses should be reasonably increased. The committee considered a bill draft to increase speeding fees. The bill draft contained two concepts. The first concept is a basic fee added to the schedule. The other concept is to reduce the schedules from three to two and make the schedules easier to explain and understand. The fees were changed in the bill draft to keep the fees in the proportion the fees were under the previous tables and to provide simplicity. In addition, the bill draft treats speeding in a school zone the same as speeding in a construction zone for the purposes of consistency.

The following table lists the fees under the bill draft:

MPH Over Limit	65 MPH and Lower Limit	70 and 75 MPH Limit
1-5	$2 - $10 + $20 = $22 - $30	$6 - $30 + $20 = $26 - $50
6-10	$18 - $30 + $20 = $38 - $50	$42 - $70 + $20 = $62 - $90
11-15	$44 - $60 + $20 = $64 - $80	$88 - $120 + $20 = $108 - $140
16-20	$80 - $100 + $20 = $100 - $120	$144 - $180 + $20 = $164 - $200
21-25	$126 - $150 + $20 = $146 - $170	$210 - $250 + $20 = $230 - $270
26-35	$186 - $245 + $20 = $206 - $265	$260 - $350 + $20 = $280 - $370
36-45	$288 - $360 + $20 = $308 - $380	$360 - $450 + $20 = $380 - $470
46+	$460 + $20 = $480 + $10 for each additional mph over the limit	$460 + $20 = $480 + $10 for each additional mph over the limit

Committee discussion included state highways are engineered to be driven with higher speeds. Whereas 15 miles per hour over may be safe for the road design on a highway, 15 miles per hour over on a city street would be very dangerous and may not be as dangerous on a highway. Committee discussion included most officers do not give a ticket until 10 miles over the limit, so fees for speeding in a city should be higher than in other areas. Because cities are limited to state law for fees, it was thought the cities would be pleased the amounts are increasing. Committee discussion included support for any reasonable increase, and the bill draft is a good starting point.

The committee was informed the bill draft has had favorable comments from law enforcement. It was argued these fees truly would be a deterrent and would save lives.

Commercial Driver Training Schools Bill Draft

The committee considered a bill draft to transfer the regulation of commercial driver training schools from the Highway Patrol to the Department of Transportation. The Department of Transportation requested the bill draft and supported it before the committee.

The committee was informed that until the 1980s the Highway Patrol officers were the driver's license examiners. At that time, these duties of the Highway Patrol were moved to the Department of Transportation, but regulation of commercial driver training schools remained with the Highway Patrol. The Highway Patrol supported transferring this duty to the Department of Transportation, and the Department of Transportation supported the transfer. This program is a small program, and the transfer will not require any additional staff.

Commercial Driver's License Conformity With Federal Law Bill Drafts

The committee considered a bill draft to make commercial driver's license laws consistent with federal regulations. The Department of Transportation requested the bill draft and supported it before the committee.

The Department of Transportation requested changes to the first draft so the language would track federal language, e.g., after "or more" insert "whichever is greater".

Recommendations

The committee recommends Senate Bill No. 2039 to improve the consistency and clarity of NDCC Chapter 39-06 on operator's licenses and provide for fee consolidation.

The committee recommends Senate Bill No. 2040 to consolidate the fees for commercial driver's licenses.

The committee recommends Senate Bill No. 2041 to provide for the destruction of license plates for driving while under the influence and driving under suspension or revocation instead of impoundment.

The committee recommends Senate Bill No. 2042 to prohibit the Department of Transportation from issuing a certificate of title or transferring a certificate of title to an out-of-state vehicle with a marked title.

The committee recommends House Bill No. 1047 to make technical corrections to the International Registration Plan, the Unified Carrier Registration System, and the Single State Insurance Registration System.

The committee recommends Senate Bill No. 2043 to define a Class III off-highway vehicle to include Argos and SnoBears and to prevent SnoBears from being registered as snowmobiles or operating on snowmobile trails.

The committee recommends Senate Bill No. 2044 to provide consistency and clarity in NDCC Chapter 39-06.1, which relates to the disposition of traffic offenses, fees, and points for traffic offenses.

The committee recommends House Bill No. 1048 to increase speeding fees.

The committee recommends Senate Bill No. 2045 to transfer the regulation of commercial driver training schools from the Highway Patrol to the Department of Transportation.

The committee recommends Senate Bill No. 2046 to make commercial driver's license laws consistent with federal regulations.

SPECIAL ROAD FUND STUDY

House Concurrent Resolution No. 3032 (2011) directed a study of the needs of, economic values of,

and methods to improve access roadways to recreational, tourist, and historical sites in North Dakota. Presently, access roads are funded through the special road fund. The resolution declares funding through the special road fund is inadequate to meet the needs of access roadways, and many of these roadways are in a significant state of disrepair or are in need of improvement. The resolution states county and township funding is inadequate to meet the needs of access roadways. The resolution stresses access roadways represent a value and provide an opportunity to increase income to local and state economies by increasing demand to visit the sites to which access roadways connect. The resolution requires the study to focus on designated or named public or privately developed recreation areas, potential funding requirements through the special road fund or other appropriate funding method for the identified access roadway improvements, and the ability of the local governmental entities to operate and maintain these improvements when completed. In short, the study is of the funding of roads and road maintenance for roads access tourist destinations, especially recreational areas.

Legislative History of Study Resolution

The minutes and testimony for House Concurrent Resolution No. 3032 reveal:

- Many of the proponents for the study have interests in and around Lake Sakakawea or Lake Oahe.
- The goal of proponents of the study is to expand the special road fund, perhaps by identifying new sources of revenues.
- Funding is inadequate to meet current and future needs.
- Roads through the Army Corps of Engineers' property create special needs for funding.
- The study should identify needs, prioritize the needs, and fund the prioritized needs.

In short, the study is of money and priorities based on a cost and benefit analysis.

Statutory History of Special Road Fund

In 1989 the Legislative Assembly created the special road fund and Special Road Advisory Committee. Under the original legislation, the fund was created with 100 percent of the interest earned on the state highway fund. The Director of the Department of Transportation had sole discretion regarding funding projects.

In 1997 the Legislative Assembly provided that beginning July 1, 1997, the interest income earned on the state highway fund would be retained in the state highway fund, and after June 30, 1999, the statutory provisions relating to the special road fund, and Special Road Advisory Committee were repealed. However, in 1999 the Legislative Assembly reestablished the committee and the fund. The committee was no longer advisory and was named the Special Road Committee. The percentage of interest from the state highway fund to be placed in the special road fund was set at 40 percent. The Legislative Assembly amended the provisions relating to the special road fund in 2009 House Bill No. 1514. This bill made two major changes. The bill increased the percentage of income derived from the interest on the state highway fund from 40 to 80 percent. The bill allowed for carryover authority for unobligated funds for two bienniums. Previously, any money not obligated by the end of the biennium reverted to the state highway fund.

Pursuant to NDCC Section 24-02-37.2, the Special Road Committee consists of a member of the Senate and a member of the House appointed by the Chairman of the Legislative Management, the Director of the Game and Fish Department, the Director of the Parks and Recreation Department, and the Director of the Department of Transportation--who is chairman. The Special Road Committee may use the money in the fund, within the limits of legislative appropriations, for constructing and maintaining access roads to, and roads within, recreational, tourist, and historical areas. The committee may require a political subdivision or state agency receiving funds for a project to contribute to the cost of the project. Any obligated money in the fund at the end of each biennium must be held for an additional two years after which the unspent funds revert to the state highway fund.

Department of Transportation Guidelines

In addition to the statutory provisions, the Department of Transportation has promulgated special road fund project guidelines. These guidelines provide the participation by the department is limited to 60 percent of the construction cost, except within state-owned recreational, tourist, and historical areas up to 100 percent of the construction costs may be available at the discretion of the Special Road Committee. The maximum financial participation is limited to $250,000. The participant is responsible for all engineering costs; acquisition of right of way; and 40 percent of the construction costs, except for up to 100 percent if state-owned. The routine maintenance of the improvement is the responsibility of the participant. The participant may be city or county government or state agency. Projects are selected on a competitive basis. The application requires the following information:

1. Description of the project and why the improvement is needed.
2. Estimate of the traffic volume.
3. Type of improvement is planned.
4. Estimate of cost.
5. Who is providing the local match.
6. Map showing the location of the project.

One additional requirement in the past, depending upon the proposed project's location, was the requirement the application must be sponsored by either a county, a city with a population of more than 5,000, or a state agency.

Special Road Fund Administration

The special road fund program is a yearly program. The following is a general timeline of the program:

- September - Solicitation of applications begin.
- Mid-December - Applications are due.

- March or April - The Special Road Committee meets and selects projects.
- April - Applicants are notified of the results.

The amount funded for the year is determined by projections as to interest for year. The amount is based on a projection of the income derived from the state highway fund, of which 80 percent is used by the fund. For example, based on an interest rate of 2 percent, 80 percent of the state highway fund's interest income is projected to be $15,000 per month for 2011. The amount available in the fund before 2011 interest income is $154,957. The total amount that is available for award in 2011 is $334,957.

Because of the low-interest rate, projects were not awarded from 2004 to 2006. The funds earned in those years were used to fund previously awarded projects and to build a balance of funds for future awards. In 2007 awarding of funds from the special road fund recommenced.

Testimony and Discussion

The committee reviewed all projects funded since the reinception of the special road fund in 1999. The committee also reviewed projects that were not funded. In addition, the committee reviewed the scoring of the projects for 2010-11 and the amount requested and awarded. The committee received testimony from representatives from the Friends of Lake Sakakawea on what the study should accomplish. The first option was to do nothing, but it was argued that option was not reasonable. Another option was to agree additional funding is necessary and warranted and to provide the funds. The third option was to recognize the need for funding and evaluate the projects and to distribute funds to selected priority sites.

It was proposed the study should be utilized to document the value of a need for investment in access roadways. It was argued roadways need to be inventoried and prioritized to document the necessary improvements, as well as the respective costs and values. This could be accomplished through various information sources, including county engineers, county park boards, county commissioners, local sportsmen's groups, state agencies, and others. All improvements would be based on existing and projected uses, individual site needs, and applicable design standards. The final recommendations most likely would be what should be done, by whom, and the cost. It was suggested the Department of Commerce should be appropriated $150,000 to complete the study. It was argued the study would help legislators in deciding what amount of money is necessary, would help justify the expenditure to the larger population, and would be the basis for future expenditures.

The committee received testimony from proponents for improved access roads. The committee was informed it is normal for a county to be overwhelmed with road repair because of the number of roads in poor condition. Although tourist destinations that use access roads generally work with the county, counties have limited funds and other priorities.

The committee was informed the anticipated amount of interest from the state highway fund is expected to go down because of lower interest rates. The current interest rate is about 1.7 percent. However, there may be a temporary increase in the amount of funds in the special road fund due to the deposit of oilfield project money by the State Treasurer in the state highway fund.

Committee discussion included the process for the special road fund works well. Committee discussion included the special road fund study could look for other sources of funding, e.g., fees for recreational vehicles or increasing the percentage of interest from the state highway fund. The committee was informed proponents were in discussions with the executive branch about including funding in the Governor's budget. It was argued this state spends substantial funds on tourism, and the last mile to get to a tourist destination is important. However, finding additional funds may be difficult because there are many needs for many different kinds of roads in this state.

It was argued the general fund is an option for funding, and the Special Road Fund Committee has been a good vehicle for any funds may be used for special roads. The largest issues are not having enough total money, the 60/40 split, and the $250,000 limit per project. It was argued there should be a direct appropriation to the special road fund of $20 million or $5 million per year over four years. The fund should be distributed with a 10 percent cost-share by local authorities or private sources. In addition, the money should be available for four years because it would take time to plan for the improvements. In addition, it was recommended the membership on the Special Road Committee be increased to include a representative from the Department of Commerce and from the State Historical Society.

Committee discussion included providing funding for special roads is a worthy effort, and although Lake Sakakawea is a large revenue source for the state, additional funding should not be limited to the Lake Sakakawea area. Committee discussion included past requests for special roads funding have come from all over the state, and an appropriation to the fund should include language that the funding is for the entire state.

Conclusion

The committee makes no recommendation regarding the study to improve access roadways to recreational, tourist, and historical sites in this state.

GENERAL TRANSPORTATION ISSUES

The committee reviewed general transportation issues as well as the assigned study. The committee received testimony on the construction process, including bids, funding, and projects. The committee received testimony on the design-build project delivery method instead of the typical design-bid-build method. The committee was informed only four states do not allow design-build, and the design-build method is a useful method for some projects because it reduces time by asking for a request for proposal from a short list of qualified firms, instead of open bidding. In addition,

because the contractor is the designer, the project can be designed to save time and money. The method is intended to be used as an exception to the general rule of design-bid-build and generally best for large projects.

The committee received testimony on the present bidding system and construction inflation costs. The committee was informed the construction industry is taxed to the maximum as to its ability to construct roads, and as a result, at times the Department of Transportation and local governments do not receive bids. Bids are not as competitive as in the past, and some bids are coming in 40 to 200 percent over the estimate. As a result, jobs have been rejected because of high bids.

Reasons for high bids include increased traffic and no housing in the western part of the state for contractors to house workers. Contractors include the cost of handling traffic and housing for workers in bids. In addition, aggregate in western North Dakota is being depleted, so the price is increasing. Diesel and labor prices are up, and there was 23 percent inflation last year.

The committee received testimony on state and local funding of roads. Motor vehicle registrations and gas and diesel fuel taxes are the primary source of income to the department, and registrations and tax receipts are up from last year. Committee discussion included the increased value for farmland may result in higher property taxes, and the additional taxes should be directed to local township and county roads.

Another suggestion for local road funding was a dollar per acre tax on agricultural land to create a bonding fund. The fund would be available to counties for roads. The bonding fund could grow to $500 million and could provide 90 percent of the funding with 10 percent from the state. It was argued the problem with funding of rural roads is there needs to be a source of money over a long period of time.

The committee was informed of the progress of certain construction projects in Williston. In the past, people did not want to have a bypass because people wanted traffic to come through town. Presently, however, people are overwhelmed with traffic. The Department of Transportation contracted for construction of a temporary bypass in Williston. Because there needs to be work done within the city of Williston, there needs to be a bypass. There is not enough time to wait for a permanent bypass. A permanent bypass will use four miles to five miles of the temporary bypass, and the rest of the permanent bypass will be a shorter route.

The committee received testimony of staffing issues of the Department of Transportation, especially in the western portion of this state. There is competition with the private sector for engineers and equipment operators. The department has instituted oilfield pay differential and subsidizes apartments in Williston. The department uses consultants for engineers, and the Williston staff does not do any engineering but manages consultants who are engineers. The staff in Bismarck does the majority of the design work, and overtime is mandatory.

The committee received testimony on studies being completed by the Upper Great Plains Transportation Institute. The Department of Transportation is working with the Upper Great Plains Transportation Institute on three studies:

- Western North Dakota traffic model study to prioritize road construction.
- Needs study for state highways.
- Traffic safety study to assess public perception of traffic safety issues and priorities in this state's oil-producing region.

The committee received testimony on commercial licenses and temporary registrations for motor vehicles. The committee received testimony on military licenses and bus endorsements. The committee was informed a new federal regulation allows for military commercial driver's licenses to be honored by a state if a skills test is taken. The committee was informed recently all states are in compliance with federal regulations, and bus commercial driver's licenses are accepted from state to state.

The committee was informed the new temporary registration law was delayed due to the unavailability of yellow window stickers for the left rear window. Usually the Highway Patrol gives six months for educational leeway for a new law, but this was not given for the temporary vehicle registration law. The temporary registration may be obtained online. The committee was informed in the first 13 months of this biennium, the Department of Transportation sold 8,814 temporary registrations for a total of $2,658,290. By way of comparison, in 2010 approximately 5,000 temporary registrations were issued for a total of $583,000.

The committee was informed there was a concern that out-of-state people are not registering vehicles in this state upon becoming gainfully employed. Committee discussion included people see out-of-state plates but do not see the temporary registration and think the vehicles are not registered. Although enforcing registration requirements on previously out-of-state people is a secondary law because of constitutional difficulties with profiling out-of-state motor vehicle operators, the temporary motor vehicle registration law has been helpful because it makes following the law easier.

The committee received testimony on the Highway Patrol and overweight trucks and permits. The committee was informed 13 Highway Patrol officers have been added, and most are for weight enforcement. The Highway Patrol is finding it difficult to find officers to live in the western part of the state. The committee was informed the officer should be located in the town in which the officer is stationed, but that is not possible due to housing issues.

The committee was informed one in four vehicles stopped is overloaded. In an enforcement program in Dickinson, 57 problems were found with 200 trucks. The Highway Patrol received $40,000 in fines in one day, and six trucks had to be taken out of service.

The committee was informed the routed permits were 111,000 in 2009, 143,000 in 2010, 199,000 in 2011, and 259,000 are expected in 2012. The electronic permitting and routing system will be in operation in a pilot program

by early 2013. The electronic permitting and routing system will be outsourced to a vendor. The vendor would provide 24 hours a day, 7 days a week permitting in a timely manner.

EMERGENCY SERVICES COMMUNICATIONS COORDINATING COMMITTEE REPORT

The committee was assigned the receipt of a report from the Emergency Services Communications Coordinating Committee regarding the use of the assessed communications services fee revenue and recommendations regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers. The committee was informed 53 counties and two cities were asked for financial surveys, and each of the 22 public safety answering points were given operational surveys with over 200 data elements.

A fee of $1.50 per communications device per month may be imposed for the operation of emergency services communications in an area. This fee provides $9.5 million of the $15.7 million per year for operating the system. The dedicated revenue from wireless is increasing, and landline revenue is decreasing. As such, fee revenue is fairly stable, but costs are increasing. The coordinating committee suggested the current fee structure remain in place for the next biennium.

There was a 22 percent increase in calls from last year which resulted in one call every eight minutes. With other dispatching duties, there is a duty to complete every 25 seconds. Several significant studies, component developments, system evaluations, and pilot projects have been completed or are underway to guide Next Generation 911 implementation in North Dakota. As several critical elements are nearing completion, the coordinating committee will submit an addendum to its report to detail its recommendations. The coordinating committee urged the Transportation Committee to review and consider recommending changes to extend deadlines.

Texting is a small component of enhanced 911. Texting provides a digital signal that cannot be accepted by a public safety answering point. The Virginia Tech tragedy showed many people text when there is an emergency. The telephone system is moving away from analog systems and moving toward digital. A digital system can receive text, video, and automatic information from fleet vehicles.

Although South Dakota has twice as many public safety answering points as this state, the committee was informed the service is not better. The number of public safety answering points has to do with history and the State Radio system. Technologically, every call could go to one public safety answering point if the radio technology were the same. This state has consolidated more because of the centralized radio technology in State Radio.

The committee was informed there is not a move to increase the public safety answering points in western North Dakota. To the contrary, some areas are looking at downsizing by moving smaller public safety answering points into larger public safety answering points in western North Dakota. It is difficult to retain dispatchers in oil country because there is a high volume of calls and the stress.

The committee was informed the emergency services communications system is handling calls well, but when anhydrous was spilled in Minot in 2002 the calls overwhelmed the system. There are pilot programs to have public safety answering points instantly work for each other when there is a problem. Presently, if a public safety answering point goes down, the telephone company can transfer the calls to a different public safety answering point, but that takes minutes. This is not ideal, and the goal is to have systems in place to transfer the calls immediately.

The committee considered a bill draft to delay the deadlines for public safety answering points by two years to be staffed continuously by at least one public safety telecommunicator, transfer emergency calls to another public safety answering point within 60 minutes upon becoming inoperative, and have up-to-date mapping and longitude and latitude for direct responders.

Recommendation

The committee recommends House Bill No. 1049 to delay the deadlines for public safety answering points by two years to the year 2015. The deadlines relate to staffing continuously by at least one public safety telecommunicator, transferring emergency calls to another public safety answering point within 60 minutes upon becoming inoperative, and having up-to-date mapping and longitude and latitude for direct responders.

TRIBAL AND STATE RELATIONS COMMITTEE

North Dakota Century Code Section 54-35-23, which expires July 31, 2013, establishes the Tribal and State Relations Committee. The committee is composed of a chairman designated by the Chairman of the Legislative Management; 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.

Section 54-35-23 directs the committee to conduct joint meetings with the North Dakota Tribal Governments' Task Force to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development. During the 2011-12 interim, the committee also is to study whether the members of the North Dakota Tribal Governments' Task Force should be voting members of the committee. 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 North Dakota Tribal Governments' Task Force is composed of six members--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.

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 Reservation 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.

Members of the North Dakota Tribal Governments' Task Force were Scott J. Davis, Executive Director, Indian Affairs Commission; Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Charles Murphy, Chairman, Standing Rock Sioux Tribe; Merle St. Claire, Chairman, Turtle Mountain Band of Chippewa Indians; Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and Roger Yankton Sr., Chairman, Spirit Lake Tribe.

Committee members were Senators David O'Connell (Chairman), Robert Erbele, Richard Marcellais, and Donald Schaible and Representatives Jim Kasper, Kenton Onstad, and Wayne Trottier.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd 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 it. 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 allotted 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 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. As used in this chapter, 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 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 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 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 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, at which any person interested in the agreement may be heard. 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 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 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 also 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 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 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 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 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 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 Chapter 54-40.2 does not affect the validity of any agreement entered between a tribe and a public agency before August 1, 1999.

2011 LEGISLATION

The 62nd Legislative Assembly enacted several bills relating to Indian issues.

House Bill No. 1049 required the Superintendent of Public Instruction to conduct a study of Indian education issues between July 1, 2011, and July 1, 2013, to develop criteria for grants to low-performing schools. In conducting this study, the Superintendent was to determine the extent to which the governance and collaborative models, including agreements with tribal governments, the Bureau of Indian Education, and the state, have in improving student achievement; whether success models are available and what makes these models effective; and whether federal, state, or local barriers exist that prevent schools and students from performing at high rates of student achievement. The Superintendent was authorized to utilize a consultant in conducting the study. The Superintendent was to report periodically to a Legislative Management interim committee on the study conducted under this section. The Legislative Management assigned this responsibility to the Education Funding and Taxation Committee.

House Bill No. 1263 provided the intercollegiate athletic team sponsored by the University of North Dakota must be known as the University of North Dakota Fighting Sioux. The bill provided neither the university nor the State Board of Higher Education may take any action to discontinue the use of the Fighting Sioux nickname or the Fighting Sioux logo in use on January 1, 2011. The bill provided any actions taken by the State Board of Higher Education and the university before the effective date of the Act to discontinue the use of the Fighting Sioux nickname and logo were preempted by the Act, and if the National Collegiate Athletic Association took any action to penalize the university for using the Fighting Sioux nickname or logo, the Attorney General was to consider filing a federal antitrust claim against the association. This provision was repealed by Senate Bill No. 2370. This bill also provided neither the State Board of Higher Education nor the university may adopt or implement an athletic nickname or corresponding logo before January 1, 2015.

Senate Bill No. 2053 extended the expiration date of the committee from July 31, 2011, to July 31, 2013. The bill replaced the Chairman of the Legislative Management, or the Chairman's designee, as Chairman of the committee, with a chairman designated by the Chairman of the Legislative Management. The bill changed the name of the Native American Tribal Citizens' Task Force to the North Dakota Tribal Governments' Task Force and expanded the scope of the committee from the study of the delivery of services, case management services, and child support enforcement to human services. In addition, the bill required the committee to study whether the

members of the task force should be voting members of the committee.

Senate Bill No. 2208 made clear the income of an enrolled member of a federally recognized Indian tribe who resides within the boundaries of a reservation in this state or in this state and an adjoining state is exempt from tax if the income is from activities or sources within the boundaries of the reservation.

Senate Concurrent Resolution No. 4012 directed the Legislative Management to study the feasibility and desirability of placing the entire Fort Berthold Reservation in a single public health unit. The Legislative Management assigned this study to the Health Services Committee.

CORRECTIONS ISSUES

The committee discussed corrections issues. The committee learned approximately 24 percent of the state's prison population and 16 percent of the state's probation and parole population are comprised of American Indian men and women with the largest group identifying themselves as Sioux--42 percent. According to the 2012 United States census, American Indians make up 5.4 percent of the state's population. Thus, the state's criminal justice system is prosecuting and incarcerating American Indians at 4.4 times the state's general American Indian population and has 3.2 times American Indians on probation and parole compared to the state's general population. The committee learned the Department of Corrections and Rehabilitation has initiated the Read Right program to improve reading comprehension abilities among its inmate population in order to support their learning ability as much of learning hinges on reading comprehension. Also, the committee learned the department is focusing on chemical and sexual offender treatment as well as mental health services. In addition, the committee learned the department has taken action to improve outcomes by having American Indian leaders speak to American Indian inmates to educate and serve as quasi-mentors.

TAXATION IN INDIAN COUNTRY

The committee reviewed state and tribal tax agreements. The committee learned the Tax Commissioner's office has developed several key attributes for state and tribal tax agreements. These include an identical tax for each tribe based upon tribal ordinances, be census-based, uniform, and efficient.

The committee reviewed motor fuel tax guidelines for tribal agreements. The state has entered motor fuel tax agreements with several Native American tribes. These agreements provide for the single administration of the collection and distribution of motor fuel taxes on behalf of the state and tribes for fuel sales within the boundaries of the reservation. The tax rates for motor fuel sales are consistent both on and off the reservation. The distribution of the tax is based on the official United States census of Native Americans who are enrolled tribal members, Native Americans who are not enrolled, and non-Native Americans residing on the reservation. For the purpose of the agreements, it is assumed Native Americans enrolled on the reservation where fuel is purchased are paying the tribal tax, and Native Americans who are not enrolled on the reservation where fuel is purchased are paying the state tax, and non-Native Americans are paying the state tax.

Motor fuel tax collected on fuel sales at a retail station on a reservation is distributed between the state and the respective tribe based on the population census. Bulk sales delivered to a consumer on a participating reservation are subject to the appropriate tax based on a member or nonmember status.

Motor fuel taxes subject to agreements are administered by the Tax Commissioner's office. All fuel dealers conducting business on the reservation must apply for a tribal motor fuel license with the Tax Commissioner, in addition to the requirements for a state motor fuel license. Retail stations located on a reservation, fuel dealers located either on or off the reservation supplying retail locations located on the reservation, and fuel dealers located either on or off the reservation supplying bulk sales to consumers on the reservation who are enrolled tribal members must have a tribal motor fuel tax license.

North Dakota motor fuel taxes apply to all consumer sales unless tribal tax or an exemption is applicable. The tax rate for both motor vehicle fuel and special fuel used in a licensed vehicle is 23 cents per gallon. Special fuel or dyed fuel used in equipment for agricultural or industrial purposes is taxed at 4 cents per gallon. Special fuel or dyed fuel used for heating fuel is tax-free. Tribal tax applies to all retail sales on the reservation. The tax rate for both motor vehicle fuel and special fuel used in a licensed vehicle is 23 cents per gallon. Dyed fuel is not subject to tribal tax.

The Tax Commissioner reported state tribal tax agreements demonstrate the effective collaboration between tribal governments, and the state and the agreements result in much-needed revenue for the tribes and ensure tax fairness for both the consumers and the retailers involved.

INDIAN EDUCATION ISSUES

Representatives of the Department of Public Instruction reported on the progress on a study of Indian education issues related to governance, success models, and barriers that prevent schools and students from performing at high rates of student achievement and to develop criteria for grants to low-performing schools throughout the interim. Representatives of the Department of Public Instruction submitted a proposal to establish a competitive pilot grant to advance two primary priorities. The first priority is to provide integrated school-based and community-based educational, health, and social support services for identifying at-risk students and their families to aid these at-risk students in meeting the goal of postsecondary success and success in life. The second priority is to institute local governance partnerships and service delivery models that enhance, support, and sustain an environment where local service providers can identify specific community needs, develop measurable plans, and implement activities to aid at-risk students and their families. The proposed pilot grant program attempts to address both individual student

needs of identified at-risk American Indian students and the structure and efficiency of local services provision by the various public and private agencies that exist to support students and their families. The primary outcome hoped to be achieved by the pilot grant program is increased self-sufficiency of students and their families and the sustainability of local collaboration efforts.

Committee Consideration

The committee considered a bill draft to authorize the Superintendent of Public Instruction to develop and implement a pilot grant program for at-risk American Indian students and for the support of community-based services. Under the bill draft, the Superintendent is required to develop and implement a competitive pilot grant program to aid integrated community services that support identified at-risk American Indian students and their families and support collaboration among community-based services. The grant must be used to provide integrated school-based and community-based educational, health, and social support services for identified at-risk students and their families and to aid these at-risk students in meeting the goal of postsecondary success and success in life and institute local governance partnerships and service delivery models that enhance, support, and sustain an environment in which local service providers can identify specific community needs, develop measurable plans, and implement activities to aid at-risk students and their families. The purpose of the grant program is to develop and adopt a school-level and community-level plan for envelopment of local supports for identified at-risk students and the overall improvement of a school's and community's capacity to deliver and sustain this effort. The bill draft appropriates $500,000 from the general fund to the Superintendent for the purpose of making the grant.

Recommendation

The committee recommends House Bill No. 1050 to authorize the Superintendent of Public Instruction to develop and implement a pilot grant program for at-risk American Indian students and for the support of community-based services.

COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS

The committee received updates throughout the interim from representatives of the Commission to Study Racial and Ethnic Bias in the Courts. The North Dakota Supreme Court established the commission to study whether racial and ethnic bias exists in the courts, and if so, potential solutions. The committee reviewed the interim report of the commission in September 2011 and the final report in October 2012. The final report contains a number of recommendations, including general recommendations, and findings and recommendations concerning juries, interpreters, crimes, juveniles, civil actions, and attorneys and court employees.

HERITAGE CENTER EXPANSION

The committee received reports throughout the interim from representatives of the State Historical Society concerning expansion of the Heritage Center. The Heritage Center staff is working with the Indian Affairs Commission to identify tribal advisers to assist the State Historical Society staff in developing appropriate exhibits for the expanded Heritage Center.

INDIAN HUMAN SERVICES ISSUES

The committee reviewed the Medicaid and children's health insurance program (CHIP) tribal consultation policy. Representatives of the Department of Human Services reported that the department acknowledges there are legal and stakeholder partnerships with the Indian tribes in North Dakota. These partnerships have grown throughout the years and will continue to be an integral part of implementing the revisions set forth by the federal American Recovery and Reinvestment Act of 2009 and the federal Patient Protection and Affordable Care Act. Representatives of the department reported it is the intent of the department to consult on a regular basis with the Indian tribes established in North Dakota on matters relating to Medicaid and CHIP eligibility and services, which are likely to have a direct impact on the Indian population. This consultation process will ensure tribal governments are included in the decisionmaking process when changes in Medicaid and CHIP will affect items, such as cost or reductions and additions to the program. The department is committed to engaging tribal consultation with a state plan amendment, waiver proposal or amendment, or a demonstration project proposal when any of these items will likely have a direct impact on North Dakota tribes or tribal members.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

The Director of the Child Support Enforcement Division of the Department of Human Services briefed the committee throughout the interim concerning child support enforcement in Indian country. The Director reported the total program caseload as of September 1, 2011, was 39,610. Of this total, 2,042 cases were identified as being unable to move forward for jurisdictional reasons. This compares to 4,177 cases out of 41,142 three years previously. The Director identified three primary reasons for this significant success. First, each case is reviewed at six-month intervals with the department looking carefully to determine whether some enforcement actions can occur, such as suspension of state-issued driver's licenses. In addition, each new decision of the North Dakota Supreme Court in this area allows the department to provide more guidance to staff on analyzing the jurisdictional issues in these cases. Second, during the last three years, the Three Affiliated Tribes has begun operating its own federally funded child support enforcement program. Finally, the department has worked with tribal courts in North Dakota to allow department attorneys to appear and request tribal court orders establishing and enforcing tribal court obligations.

TRANSPORTATION IN INDIAN COUNTRY

Representatives of the Department of Transportation briefed the committee throughout the interim on transportation projects on the state's reservations. The department has invested $180.1 million in federal funds and state matching funds for various road projects within the state's Indian reservations during the 2011-12 construction seasons. There are transportation projects on each of the state's reservations as well as traffic safety projects. Recent safety projects include rumble strips, implementation of the Traffic and Criminal Software (TraCS) program, and a National Highway Traffic Safety Administration grant for safety campaigns specific to each tribe.

INDIAN VETERANS

The Commissioner of Veterans' Affairs briefed the committee on services available from the Department of Veterans' Affairs for Indian veterans. A member of the committee urged the Commissioner to consider placing Indian veterans' service representatives on each of the state's reservations. The committee member said Indian veterans may feel more comfortable interacting with Indian veterans' service representatives to access veterans' services.

TOURISM ISSUES

The Director of the Tourism Division of the Department of Commerce briefed the committee on tourism initiatives in Indian country. The division has partnered with tribal tourism representatives, Indian Affairs Commission staff, and the United Tribes Technical College on a number of projects and initiatives. These initiatives include the Lewis and Clark Bicentennial, international marketing, product development, and general marketing.

NATIVE AMERICAN COMMISSION

The committee received information concerning the Fargo Native American Commission. The commission is designed to improve local residents' perception and awareness of Native Americans and Native American issues. A mission of the commission is to work together to strengthen the Native American community in order to promote understanding, recognition, and respect for Native American cultures and enrich the whole community. The commission has four goals--define the role and responsibilities of the commission, define the funding priorities for Native American programs and services, determine the services that might be provided by a facility to serve the Native American community, and recommend an effective antiracism education model and to facilitate city and community participation in training.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

The committee received reports from the American Indian Business Development Office of the Department of Commerce throughout the interim. The office is facilitating relations between Indian and non-Indian businesses, facilitating economic development on each of the state's reservations, working to enhance tourism, facilitating community and economic development both on and off the reservation, and providing a link to public and private economic development resources. One new initiative developed by the office is to support Native American-owned businesses by creating independence in the spirit of entrepreneurship. This initiative is the Indian Business Alliance of North Dakota which is designed to help create new Native American-owned businesses and support existing Native American-owned businesses both on and off the reservation. A prime initiative of the Indian Business Alliance is to identify existing Indian businesses as many off-reservation businesses would like to partner with Native American-owned businesses on the reservations which will ultimately benefit both the state's reservations and the state as a whole.

ENVIRONMENTAL ISSUES IN INDIAN COUNTRY

The committee reviewed water availability for oil and gas development in North Dakota, the status of water depot permit applications, and issues with the Corps of Engineers for access to Lake Sakakawea water. The committee also reviewed the status of water permits and applications for western North Dakota and the oil and gas industry and the impact the availability of water permits may have on the Fort Berthold Reservation.

OIL AND GAS EXPLORATION, PRODUCTION, AND TAXATION IN INDIAN COUNTRY

Oil and Gas Tax Agreement

The committee reviewed the operation and effect of the oil and gas tax agreement with the Three Affiliated Tribes. The agreement establishes a uniform taxation system for oil and gas production within the boundaries of the reservation.

Under the agreement, the Tax Commissioner establishes for each reservation well the mineral acres of trust land and non-trust land. The wells are subject to a 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 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 agreement provides 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.

In June 2008 before the agreement was in place, there were 75 rigs operating in North Dakota but none on the

Fort Berthold Reservation and none on trust lands. As of October 2012, 190 rigs were operating in North Dakota with 26 on the Fort Berthold Reservation and all 26 on trust lands. As of October 1, 2012, there were 706 producing wells on the Fort Berthold Reservation. Of these wells, 112 were drilled before the agreement and 594 were drilled since the agreement. Of the 259 locations approved to drill on the Fort Berthold Reservation, 244 are located on trust lands. The committee learned that based upon Department of Mineral Resources' projections, 1,426 of the 1,566 future wells expected in approved spacing units on the Fort Berthold Reservation will be drilled on trust land. Based upon Department of Mineral Resources' projections, under the current agreement, the tribe will recognize $9,574 million from all postagreement activity while the state will recognize $10,362 million from all postagreement activity.

Representatives of the Tax Department reported that from fiscal year 2009 to the present, $345,951,301 has been realized from gross production and oil extraction taxes from oil production on the reservation. Of this total, approximately $129 million has gone to the tribe and $217 million to the state.

Representatives of the Three Affiliated Tribes testified the agreement is not equitable and should be revised. Representatives of the tribe noted that for 2011, trust lands produced 59 percent of tax revenues while the tribe only realized 38 percent of the tax revenues from oil and gas produced on the Fort Berthold Reservation. For 2012, 68 percent of tax revenues have been generated from trust lands while the tribe only realized 40 percent of tax revenues.

Biennial Report on the Implementation of the Oil and Gas Tax Agreement With the Three Affiliated Tribes

A representative of the Governor's office presented the biennial report on the implementation of the oil and gas tax agreement with the Three Affiliated Tribes. The representative reported that the state's agreement with the Three Affiliated Tribes has been a great success in terms of providing a stable, predictable tax environment in order to encourage development of oil and gas resources within the reservation. The trend going forward is toward a much higher percentage of wells within the reservation being drilled on trust land. Tribal oil and gas tax revenues have grown steadily since the agreement was signed, and the distribution of production and extraction tax revenue to the tribe recently reached $7 million per month with total revenues distributed to the tribe in excess of $115 million.

The representative of the Governor's office reported the agreement has worked well and the revenue projected to both the state and the tribe continues to increase. By creating a more predictable tax environment within the reservation, the agreement has removed significant barriers to oil and gas development and helped to spread the activity and prosperity found across the rest of the Bakken Formation into the Fort Berthold Reservation. The tribal government has been a good partner in implementing the agreement, and the state looks forward to a continued positive working relationship.

Committee Consideration

The committee considered a bill draft to change the allocation of revenues from oil and gas gross production and oil extraction tax attributable to production from wells drilled on trust lands of the Fort Berthold Reservation from 50 percent to the tribe and 50 percent to the state to 80 percent to the tribe and 20 percent to the state.

Recommendation

The committee recommends the 63rd Legislative Assembly review the operation and effect of the oil and gas tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation.

COMMITTEE ON TRIBAL AND STATE RELATIONS

The Committee on Tribal and State Relations is effective through July 31, 2013. The committee discussed whether the committee should be allowed to expire, be extended, or made a permanent interim committee of the Legislative Management and whether the North Dakota Tribal Governments' Task Force should be voting members of the committee. The Executive Director of the Indian Affairs Commission testified it is very important the Tribal and State Relations Committee continue. The committee is very important for tribes and is a good exercise in government-to-government relations and strengthens relations between the state and the tribes.

Committee Consideration

The committee considered a bill draft to extend the Committee on Tribal and State Relations through July 31, 2015. The bill draft also deletes the requirement the committee study whether the members of the North Dakota Tribal Governments' Task Force should be voting members of the committee as this study has been completed.

Recommendation

The committee recommends Senate Bill No. 2047 to extend the Committee on Tribal and State Relations through July 31, 2015.

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 expires on November 30, 2013, at which time a provision making the Legislative Management responsible for legislative overview of the Garrison Diversion Project and related matters, and for any necessary discussions with adjacent states on water-related topics again becomes effective.

Section 54-35-02.7 also requires the committee to review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects during the 2011-12 interim.

Section 6 of 2011 House Bill No. 1206 required the State Water Commission to consult and work cooperatively with the committee in setting the priority of a loan of $40 million from the resources trust fund to the Western Area Water Supply Authority for inclusion within the commission's budget.

The Chairman of the Legislative Management assigned a study of the federal government's management of the Garrison Dam, including review of the Army Corps of Engineers' (Corps) management and decisionmaking policies relating to the Missouri River system, water releases and river and reservoir levels since July 2010, and the reasons supporting the decisions relating to reservoir levels and water release rates since July 2010, to the committee.

Committee members were Representatives Curt Hofstad (Chairman), Chuck Damschen, Bill Devlin, Lee Kaldor, Curtiss Kreun, Jon Nelson, Kenton Onstad, and Jim Schmidt and Senators Randy Burckhard, Tony Grindberg, Larry Luick, George L. Nodland, and Connie Triplett. Senator Tom Fischer, prior to his death on November 16, 2011, was a member and Chairman of the committee.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

2011 MOUSE RIVER FLOOD

The Souris River, or Mouse River, as it is named in North Dakota, has its headwaters in the Province of Saskatchewan and flows generally in a southeasterly direction, crossing the United States border into the state west of Sherwood. The river continues its southeasterly flow to Velva, where it reverses course and flows northeasterly to Towner, and then northwesterly to the Canadian border and into the Province of Manitoba near Westhope. The Souris River eventually flows into the Assiniboine River, a tributary of the Red River of the North. The Souris River Valley is flat and shallow, and its semi-arid prairie has been extensively cultivated. Major reservoirs have been constructed in both the United States and Canadian portions of the basin, including Boundary, Rafferty, and Alameda Reservoirs in Saskatchewan, and Lake Darling in North Dakota.

The basin also includes a number of wildlife refuges and small impoundments along the United States portion of the river. The United States Fish and Wildlife Service (USFWS) operates three national wildlife refuges located on the Mouse River in North Dakota. The Upper Souris National Wildlife Refuge is located near Foxholm, upstream of Minot. Des Lacs National Wildlife Refuge is located on the Des Lacs River, a tributary of the Mouse River, near Kenmare. J. Clark Salyer National Wildlife Refuge is located near Upham, downstream of Towner. All of the major storage impoundments in the Mouse River Basin in North Dakota are located on national wildlife refuges and are operated by the USFWS under water rights permits issued by the state.

Pursuant to the 1989 International *Agreement Between The Government Of Canada And The Government Of The United States Of America For Water Supply And Flood Control In The Souris Basin*, flood control within the Souris Basin is afforded by several reservoirs in Canada and the United States collectively known as the Souris Basin Project. This term refers to the development and operation of Rafferty Dam, Alameda Dam, and the Boundary Diversion channel in Canada, the operation of the existing Boundary Reservoir in Saskatchewan, and the operation of the existing Lake Darling Reservoir in North Dakota in the United States for flood control. Rafferty Reservoir, Boundary Reservoir, and Alameda Reservoir are known collectively as the Canadian Reservoirs. The project also included a number of rural and levee improvements along the Mouse River in North Dakota and improvements to other USFWS refuge structures in North Dakota.

Under the provisions of Article X of the 1989 International Agreement, the government of Saskatchewan and the United States Department of the Army (Army) are designated as the responsible entities for the management of the improvements covered by the agreement during periods of flood. In Saskatchewan, this authority rests with the formerly named Saskatchewan Water Corporation, now called the Saskatchewan Watershed Authority (SWA), a provincial crown corporation. In the United States, this authority rests with the Corps, through its St. Paul District. During nonflood periods, SWA is also the responsible entity for operations in Canada, while the USFWS is the responsible entity in the United States.

A June 2, 1989, memorandum of understanding between the USFWS and the Corps formalized and established the procedures, administration, cooperation, and coordination between the two agencies for operation of Lake Darling for flood control purposes under the 1989 International Agreement, and for identification and remediation of adverse impacts of the Souris Basin

Project to fish and wildlife resources, refuge facilities, and operations on the Upper Souris River and J. Clark Salyer National Wildlife Refuges.

The objectives of the operating plan are to:

- Provide 1 percent (100-year) flood protection at Minot, North Dakota;
- Provide flood protection to urban and rural areas downstream of Rafferty Dam, Alameda Dam, and Lake Darling Dam; and
- Ensure, to the extent possible, that the existing benefits from the supply of water in the Souris River Basin and the supply of water to the Souris Basin Project are not compromised.

Section 6.0 of Annex A of the 1989 International Agreement provides these responsible entities will accomplish liaison with interested states, provinces, and agencies from time to time as to the operation of the project. Additionally, Section 6.0 provides representatives of the Army, Saskatchewan Water Corporation, USFWS, and North Dakota State Engineer have responsibility to monitor reservoir operations under the agreement.

Further responsibilities of the governments of Canada and the United States are defined in Article V of the 1989 International Agreement. These responsibilities include consultation with interested states, provinces, and agencies concerning preparation of reservoir regulation manuals and periodic review and revision of the operating plan contained in Annex A, at five-year intervals, or as mutually agreed, to maximize the provision of flood control and water supply benefits that can be provided consistent with the terms of the agreement.

Representatives of SWA and the Corps formally established the Forecasting and Flood Operations Coordinating Group (FFOCG) on March 24, 1999, to coordinate activities for flood operations. Representatives of agencies having responsibilities under the 1989 International Agreement and other agencies directly involved in forecasting and reservoir operations, and member agencies of the International Souris River Board were selected to participate.

Forecasting and Flood Operations Coordinating Group representatives are from the following agencies:

- Saskatchewan Watershed Authority, formerly Saskatchewan Water Corporation;
- Corps;
- North Dakota State Water Commission/North Dakota State Engineer; and
- USFWS.

Beginning on February 1 of each year, and thereafter on the 15th and last day of the month until runoff occurs, the SWA prepares forecasts of the maximum 30-day and 90-day runoff, with assistance from the National Weather Service as appropriate. In accordance with the operating plan for the Canadian Reservoirs and Lake Darling contained in Annex A of the 1989 International Agreement, flood control operation of the Souris Basin Project is triggered if:

- February 1, or subsequent spring runoff estimate, shows a 50 percent chance of a 30-day unregulated runoff volume at the Sherwood crossing equaling or exceeding 175,200 acre-feet; or
- A 10 percent (10-year) flood volume, the local 30-day runoff volume at the Sherwood crossing equals or exceeds 30,000 acre-feet.

During years of flood operation, the terms of Annex A of the 1989 International Agreement establish reservoir target drawdown levels for Rafferty, Alameda, and Boundary Reservoirs in Canada and Lake Darling in North Dakota. In these years, it also provides for target flows in North Dakota for the Mouse River near Sherwood and Minot. In addition to the SWA forecasts, the National Weather Service's North Central River Forecast Center in Chanhassen, Minnesota, issues a spring flood outlook for the North Dakota portion of the basin.

The State Engineer briefed the committee on the Mouse River flood of 2011. The State Engineer reported that between March 1, 2011, and the flood event, the United States Geological Survey made 28 measurements of discharge on the Mouse River near Sherwood to document the flood. Seven out 28 measurements were greater than the previous peak record of 14,800 cubic feet per second set in 1976. The provisional peak flow of 29,700 cubic feet per second occurred on June 24, 2011. The peak flow at Sherwood was approximately two times larger than the previous peak flow of 14,800 cubic feet per second in 1976. The volume or amount of water flowing past the Sherwood gauge also was recordbreaking. During the first nine months of the 2011 water year, October 1, 2010, through June 30, 2011, 1,201 acre-feet had been measured at the Sherwood gauge, and the recordbreaking volume of water continued to increase because of the high flows still in the river. Total flow volume in June was 632,800 acre-feet, or approximately the same as the largest total annual volume of 635,300 acre-feet which occurred in 1976. On June 24, 2011, more water passed the Sherwood gauge on the Mouse River than was recorded in 45 years of total annual volume out of 82 years of record. Thus, by all measures, the 2011 flood in the Souris River Basin was recordsetting.

The committee toured Minot flood damage and flood mitigation infrastructure development. The committee learned 4,100 structures were damaged by the June 2011 flood. Of this total, 350 to 400 homes will probably need to be demolished as they cannot be made habitable. The committee learned another challenge facing the city of Minot is the increase in solid waste coming into the Minot landfill. This will decrease the working life of the landfill. The city is also in the process of developing a flood hazard mitigation request. The goal of this process is to demonstrate to the Federal Emergency Management Agency (FEMA) the value of project benefits exceeds construction costs.

Hazard mitigation project applications and progress include the Sixth Street Southwest underpass pump station and storm drain improvements, water treatment plant flood mitigation, elimination of gravity sewer river crossings, consolidation of storm sewer outfalls, improvement in the city's communications network, and upgrading six lift stations with emergency generators.

2011 MISSOURI RIVER FLOOD

Background

Six dams and reservoir projects make up the Missouri River reservoir system. Each project was constructed by the federal government, and each project is operated and maintained by the Corps for the purposes of flood control, water supply, recreation, irrigation, hydropower, water quality, fish and wildlife habitat, and navigation.

The first of the mainstem dams to be constructed was Fort Peck, which was completed under an authorization by Congress as part of the Rivers and Harbors Act of 1935. Later, the Pick-Sloan Plan, a cooperative effort between the Corps and the Bureau of Reclamation, called for the construction of five more mainstem dams along the Missouri River. Authorization of the Pick-Sloan Plan came with congressional passage of the Flood Control Act of 1944. The other five mainstem dams built on the Missouri River are Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point. The reservoirs behind each of the six mainstem dams are Fort Peck Lake, Lake Sakakawea, Lake Oahe, Lake Sharpe, Lake Francis Case, and Lewis and Clark Lake.

The Corps operates the Missouri River mainstem system under the guidance of the *Missouri River Master Water Control Manual*, also known as the *Master Manual*. The *Master Manual* was originally developed in 1960, and it has undergone a series of revisions, the most recent of which was completed in 2004. Directed by the *Master Manual*, the Corps has system storage and reservoir level targets that are to be met by March 1. These targets are a total system storage of 56.8 million acre-feet, and pool elevations of 2,234 feet above mean sea level, 1,837.5 feet above mean sea level, and 1,607.5 feet above mean sea level for Fort Peck Lake, Lake Sakakawea, and Lake Oahe, respectively. In 2011 the reservoir system on March 1 was at 57.6 million acre-feet, 2,235.8 feet above mean sea level, 1,838.5 feet above mean sea level, and 1,607.7 feet above mean sea level, for system storage on Fort Peck Lake, Lake Sakakawea, and Lake Oahe, respectively.

On July 10, 2011, system storage in the six mainstem reservoirs was 72.6 million acre-feet, 14.3 million acre-feet above the average system storage for the end of June, and 7.0 million acre-feet more than the previous year. On July 2 the system storage exceeded the previous system storage annual maximum record of 71.8 million acre-feet, which was set in July 1975. For the first six months, runoff into the Missouri River system above Sioux City, Iowa, was 42.3 million acre-feet, 261 percent of normal.

On July 10, 2011, Lake Sakakawea reached an elevation of 1,854.4 feet above mean sea level, 4.4 feet into the exclusive flood pool, 5 feet higher than one year earlier, and 15 feet above its average daily elevation for July. The previous maximum daily elevation was 1,854.8 feet above mean sea level, which occurred in July 1975. Prior to this event, the maximum discharge from Lake Sakakawea was 65,200 cubic feet per second in 1975.

The elevation at Fort Peck Lake was 2,249.8 feet above mean sea level on July 10, 2011. This was 15 feet higher than the previous elevation and 17.1 feet higher than the average daily July elevation. The previous maximum daily July elevation for Fort Peck Lake was 2,251.6 feet above mean sea level in 1975. On July 10, 2011, releases from Fort Peck Dam were 44,900 cubic feet per second.

The stage in Williston on June 13, 2011, was 29.27 feet. The average June gauge stage at Williston is 18.45 feet. The previous record stage was set in 1912 and was 28.0 feet.

The river stage and flow on July 11, 2011, in Bismarck was 19.11 feet and 141,000 cubic feet per second, respectively. Postconstruction of Garrison Dam, the average July gauge stage at Bismarck is 6.29 feet, and the average June flow at Bismarck is 24,200 cubic feet per second. The previous river stage record, postdam, was 16.11 feet in the spring of 2009, which was caused by an ice jam. The 2005 *Burleigh County Federal Emergency Management Agency Flood Insurance Study* states there is a 1 percent chance every year, or commonly referred to as the 100-year flow, of 94,000 cubic feet per second, and a 0.2 percent chance every year, or commonly referred to as the 500-year flow, of 148,000 cubic feet per second.

The elevation of Lake Oahe was 1,619.4 feet above mean sea level on July 11, 2011, just 2 feet higher than the previous year, and 14.9 feet higher than the average daily July elevation. The maximum daily July elevation for Lake Oahe was 1,618.6 feet in 1995. On July 10, 2011, the release from Lake Oahe was 150,500 cubic feet per second. Prior to this event, the maximum flow out of Lake Oahe was 59,300 cubic feet per second in 1997.

The river stage on July 11, 2011, at Pierre, South Dakota, was 18.99 feet. The average July gauge stage at Pierre is 8.4 feet. The 2004 *Hughes County Federal Emergency Management Agency Flood Insurance Study* states there is a 1 percent chance every year, or commonly referred to as the 100-year flow, of 70,000 cubic feet per second at Pierre.

On July 8, 2011, the mountain snowpack was 11 percent and 10 percent of the normal April 15 peak in the "Total Above Fort Peck" and the "Total Fort Peck to Garrison" reaches, respectively. The "Total Above Fort Peck" reach appeared to have peaked on May 2, 2011, at 141 percent of the normal peak. The "Total Fort Peck to Garrison" reach appeared to have peaked on April 15, 2011, and May 2, 2011, at 136 percent of the normal peak.

The State Engineer reported there was considerable discussion regarding the Corps' management of the Missouri River system in 2011. The committee received three scenarios concerning the effects of several plausible changes in reservoir operation, if the Corps had known several significant precipitation events totaling 9 inches to 17.5 inches over the course of three weeks was to occur within the watershed.

The volume of water that passed the Bismarck gauge between March 1 and June 12, 2011, was 9.47 million acre-feet. If the Corps had increased releases so that the river stage at Bismarck was 11.5 feet above mean sea level, or 46,000 cubic feet per second, on April 13,

2011, as the State Water Commission advised, an additional 1.25 million acre-feet could have been released. That is the difference between 1,853.3 feet on June 13, 2011, to a potential elevation of 1,849.9 feet on June 13, 2011. If the additional 1.25 million acre-feet had been used in holding back releases from Garrison Dam, flows of 46,000 cubic feet per second could have been maintained through Bismarck until June 5, 2011, at which time the Corps would have had to ramp up to the then current release schedule and reach the same peak discharge and river stage.

If the Corps had disregarded any potential ice jam problems or other flooding concerns in the Bismarck area in the spring of 2011 and increased releases so that the water that passed the Bismarck gauge was at a river stage of 11.5 feet, or 46,000 cubic feet per second, on March 1, 2011, the Corps could have discharged an additional 2.4 million acre-feet, which would have resulted in a reservoir elevation of 1,846.7 feet on June 13, 2011. If the additional 2.4 million acre-feet had been used in holding back releases, flows of 46,000 cubic feet per second could have been maintained through Bismarck until June 12, 2011, at which time the Corps would have had to ramp up to the then current release schedule.

In order for flows on the Missouri River to not have exceeded 46,000 cubic feet per second through June 30, 2011, and to reach the average June 30, 2011, elevation for Lake Sakakawea of 1,838.7 feet above mean sea level, the Corps would have had to have already drawn Lake Sakakawea down to an elevation of 1,814.7 feet above mean sea level by March 1, 2011, which was 22.8 feet lower than its March target elevation of 1,837.5 feet above mean sea level. If the Corps had known the volume of water entering the system, Lake Sakakawea would had to have been drawn down 22.8 feet lower than the Corps' multiple use pool--power generation, water supply, navigation, and recreation--level in order to avoid flooding problems in Bismarck.

Corps of Engineers 2011 Missouri River Operations

The Deputy for Project Management and Chief of the Programs and Project Management Division for the Omaha District of the Corps briefed the committee on 2011 Missouri River flooding and operation of the Missouri River system during the flood. The 2011 forecast for the Missouri River system estimated runoff of 60.4 million acre-feet of water. This was the highest runoff since 1898, with the previous record being 48 million acre-feet in 1997.

Following the flood, the Corps evacuated flood storage as fast as possible, assessed dam and reservoir infrastructure for damage, repaired damages and commenced preparations for the 2012 runoff season, and developed an annual operating plan. The Corps also assessed levees and other flood infrastructure as soon as the floodwaters receded, worked with levee sponsors to develop repair plans, and reconstructed damaged facilities before the 2012 runoff season. The Corps representative testified the Corps intended to conduct a flood fight review and after-action report of the flood event and flood fight activities. The agency intended to conduct a water management review and reservoir operations independent review as well as an infrastructure damage assessment. The agency also intended to compile all economic, social, and environmental impacts of the flood and develop a comprehensive restoration plan.

The Corps representative reported the Missouri River system performed very well in that although the regulated flow caused a tremendous amount of damage, an unregulated flow would have been catastrophic. There are eight authorized purposes for operating the Missouri River system. The Corps representative noted only one of the purposes has a lack of water--flood control--as its focus, while the other seven authorized purposes involve more water in the system. Although flood control is a primary purpose, all eight authorized purposes must be balanced between more and less water.

DEVILS LAKE FLOOD OF 2011

The State Engineer reported the elevation of Devils Lake on July 7, 2011, was 1,454.30 feet mean sea level. At that time, the volume of the lake was 4.17 million acre-feet, and the lake covered 208,000 acres. The apparent peak and record elevation occurred on June 27, 2011, at 1,454.39 feet mean sea level. From January 1, 2011, to June 27, 2011, the lake rose 2.8 feet, increased in volume by 542,000 acre-feet, and increased in area by 32,000 acres.

At a level of 1,458.0 feet mean sea level, the lake will spill from the natural outlet from the Tolna Coulee. The State Engineer reported on west end outlet operations commenced on May 26, 2011, with a flow of 150 cubic feet per second. An increase in flow of 250 cubic feet per second began on June 8, 2011, and continued throughout the season.

FARGO FLOOD RISK REDUCTION

The committee reviewed the Fargo-Moorhead Metropolitan Area Flood Risk Management Fargo-Moorhead Diversion Project being designed by the Corps. The committee learned the flood stage of the Red River at the Fargo gauge is 18 feet. This level has been exceeded in 48 of the past 109 years and has been exceeded every year from 1993 through 2011. Catastrophic damages have been prevented by emergency measures with 11 disaster declarations since 1989. The 2009 flood was the flood of record with a flood stage of 40.8 feet. The 2009 flood emergency measures cost approximately $70 million.

Without the project, the Fargo-Moorhead metropolitan area will continue to be subject to flooding and will have to rely on emergency responses. The Corps reported failure of emergency levees would be catastrophic, and the expected average annual flood damage is greater than $194.8 million and will continue to increase. Estimated damages from a 500-year flood are approximately $10 billion. The committee learned a number of alternatives have been considered, including no action, three diversion channels, levees, and storage.

The Fargo-Moorhead Diversion Project, as identified in the feasibility document, calls for a 20,000 cubic feet per second diversion channel in North Dakota, 50,000 acre-feet of storage, 150,000 acre-feet of staging, a 36-mile diversion, 10 miles of tie-back levees, control structures on the Red and Wild Rice Rivers, aqueduct and spillway structures on the Sheyenne and Maple Rivers, drop structures on the Lower Rush and Rush Rivers, and nonstructural mitigation for impacts in the storage and staging areas. The cost-benefit ratio of the project is 1.74 and will cost approximately $1.75 billion. The project will result in an annual net flood risk management benefit of approximately $74,219,000 and will have $32 million in average annual residual damages. Representatives of the Corps reported the proposed project will have negligible downstream impacts. It is anticipated the project will be operable in the spring of 2021 but still requires congressional authorization and funding.

2011 FLOOD DAMAGE ASSESSMENTS AS REPORTED TO THE COMMITTEE

Representatives of several political subdivisions and the Adjutant General reported on the cost of flood damage to infrastructure and potential new funding requests as a result of 2011 flooding in North Dakota. This information is summarized in the following tables:

Valley City

2011 Flood Costs to Protect Valley City	
Emergency dike construction and flood preparation	$5,170,000
Removal of dikes, sandbags, and debris	$1,800,000
Repairs to streets and sanitary sewer	$1,750,000
Buildings and utilities	$80,000

Proposed Investments in Valley City's Future	
Phase 1 buyout program (12 months to 18 months)	$3,600,000
Phase 2 buyout program (protect Valley City State University and downtown business district) (18 months to 36 months)	$19,850,000
Permanent flood protection as envisioned by the Corps and State Water Commission (36-plus months)	$20 million to $30 million
Higher water treatment costs	$57,000 to $130,000/per year

City of Fort Ransom

Soils investigation and report	$30,000
Preliminary engineering report	$50,000
Levee system	$5,400,000
Diversion channel	$2,800,000

Lisbon

2011 flood expenses	$2,469,508
Reimbursements	1,250,205
Net city costs	$1,219,303

Potential Future Costs	
Permanent levee	$11,000,000
Home buyouts	$1,600,000

West Fargo Sheyenne River Diversion - Channel Bottom Restoration

State Water Commission	$3.8 million
Local cost-share	$5.7 million

Bismarck

Corps expenditures	$4.2 million
May 23, 2011, through August 30, 2011, expenditures	$9.9 million
August 30, 2011-2012 expenditures	
Sandbag collection and disposal	$3 million to $4 million
Roadway repairs	$2 million to $3 million
Water control facility repairs	$2 million to $3 million
Meriwether's building removal	$175,000 to $300,000
Levee adjustments, maintenance, and removal	$3 million to $5 million

Mandan

2011 flood control expenditures	$2.2 million (local share $250,000)
Corps expenditures	$2.1 million

Minot

2011 estimated flood damages	Excess of $100 million

Williston

Seepage berm to mitigate risk of boils	$181,583
Access road improvements	$185,485
Boil access	$16,170

Fort Yates

Corps Sitting Bull site and water intake	$150,000
Causeway riprap protection	$600,000

Morton County

Individual assistance from FEMA	$869,020
Levee and sandbags	$530,300
Debris removal	$12,613
Sandbag removal	$300,000
Graveled road damage	$475,000
Paved road damage	$325,000
Timberhaven Drive grade raise	$400,000 to $1,200,000

Cass County

2011 flood fighting costs	$2,567,461
2011 flood repair costs	$2,939,376

Devils Lake and Ramsey County

2011 road repair	$257.6 million
Department of Transportation new construction 2011-12	$114.95 million
Devils Lake levee expansion (75 percent federal cost-share)	$113 million
Devils Lake Outlet expansion to 250 cubic feet per second	$16 million
East end outlet	$80 million
Tolna Coulee control structure	$9 million

Adjutant General

2011 Estimated State Flooding Costs as of August 29, 2011 - May Be Included in Above Numbers	
State direct costs	$35 million
State indirect costs	$25 million
Public infrastructure	$305 million
Individual assistance	$91 million
Hazard mitigation program	$64 million

NORTH DAKOTA WATER ORGANIZATION STRUCTURE - PRIORITIZATION AND FUNDING OF STATE WATER PROJECTS

The committee reviewed the formation, structure, and history of North Dakota water organizations. The State Water Commission was created in 1937 in response to the drought of the 1930s and was charged with developing irrigation in the state. From 1937 to 1981, the Legislative Assembly funded the commission on a biennium-to-biennium basis with approximately $500,000 to $2,000,000 being appropriated per biennium. This changed with creation of the resources trust fund in 1981. When the resources trust fund was first created, the proceeds of the fund were dedicated to financing the Southwest Pipeline Project--the first state water project. During this period, the scope of projects increased dramatically as the Southwest Pipeline Project was a $100 million project. Concerning municipal, rural, and industrial water supply funding, important milestones were the Garrison Diversion Unit Reformulation Act of 1986, the Dakota Water Resources Act of 2000, and the establishment of the joint municipal, rural, and industrial water supply committee between the State Water Commission and the Garrison Diversion Conservancy District.

The North Dakota Water Coalition was created in 1994, and as a result of concerns with North Dakota's commitment to deliver water to eastern North Dakota, the Legislative Assembly in 1997 established a state water resources policy, which is codified as Section 61-01-26.2, to deliver water to eastern North Dakota. To increase funding for water projects, the Legislative Assembly created the water development trust fund using tobacco settlement money in 1999. In 1999-2001 priorities included the Southwest Pipeline Project, Northwest Area Water Supply Project, Grand Forks flood control, and Devils Lake flood control. In 2001-03 other priorities identified included delivery of water to eastern North Dakota; municipal, rural, and industrial water supply project funding; and general water management.

The committee reviewed the status of the State Water Commission's projects and grants contract fund for the 2011-13 biennium. The commission spent a total of $93.6 million for the 2009-11 biennium. As recently as 10 years ago, the commission spent $5 million per biennium. The commission has budgeted $389,835,582, including $31,714,000 approved at the March 13, 2012, Budget Section meeting, for the 2011-13 biennium.

The committee reviewed the water project prioritization process used by the State Water Commission. The committee learned the commission first sends out an information letter to each stakeholder in the state requesting information on water needs for the 2013-15 biennium. This information must have been submitted by the end of April 2012. Also during this period, the Office of Management and Budget issued budget guidelines to the various departments. The commission is developing its budget request over the summer based upon the budget guidelines and information received from stakeholders. All stakeholders from the North Dakota Water Coalition, local project sponsors, State Water Commission, and the Legislative Assembly work together to prioritize projects.

Committee Considerations

The committee considered a bill draft to update the statewide water development goals through the 2017-19 biennium. Section 61-01-26.2 identifies statewide water development goals through the 2009-11 biennium. The updated goals include Devils Lake flood control; the Fargo flood control project; a Mouse River flood protection project; general water management of flood control projects; water treatment; irrigation; municipal, rural, and industrial projects; the Northwest Area Water Supply Project; the Red River Valley Water Supply Project; the Southwest Pipeline Project; and the Western Area Water Supply Project.

The committee considered a bill draft to require the State Water Commission to develop policies concerning allocation of funds from the resources trust fund. Under the bill draft, the commission is required to develop policies to maximize long-term funding for water development and water management through the resources trust fund. In furtherance of these policies, the commission is to consider factors, such as revenues, water rates, operation and maintenance costs, local assessments and contributions, and other local commitments; allocate funds from the resources trust fund in the form of loans if an entity is determined to have the ability to repay the funds allocated; and set the terms of loans for entities that have the ability to repay funds allocated, including length of repayment, interest rates, and other terms. If the commission determines an entity does not have the ability to repay the funds allocated, the commission may allocate funds in the form of grants up to the amount the entity has an inability to repay the funds allocated.

Recommendation

The committee recommends Senate Bill No. 2048 to require the State Water Commission to develop policies

governing allocation of funds from the resources trust fund.

RED RIVER VALLEY WATER SUPPLY PROJECT

Representatives of the Lake Agassiz Water Authority reviewed the Red River Valley Water Supply Project. The impetus for the project began in 1992 with concern for long-term water supply for the city of Fargo. However, despite intense local efforts, approval for the project has not been forthcoming, and the Lake Agassiz Water Authority is exploring moving forward with a local and state plan without federal participation.

The consulting engineers for the project considered multiple potential alternatives--two of which emerged. The two final alternatives under consideration are a route from Washburn to Baldhill Creek and a route from Bismarck to Lake Ashtabula along the Interstate 94 corridor. The estimated total project cost for the Washburn to Baldhill Creek alternative is $781.4 million, and the Bismarck to Lake Ashtabula estimate is $804.4 million. However, the committee learned there is no significant advantage between the two routes based on cost alone. The Bismarck alternative has slightly lower operating costs due to reduced treatment and less pumping expected and a "higher profile" corridor. The Washburn alternative has equal or slightly lower capital costs, a less-congested corridor, a completed federal environmental impact study for a majority of the route, right-of-way options secured on 76 percent of the required route, completion of 83 percent of the preliminary design, identification of the required permits, and access to the McClusky Canal. In conclusion, the committee learned the Washburn alternative utilizing the previous preferred alternative route is more advantageous and slightly more economical than the Bismarck alternative.

RED RIVER BASIN COMMISSION

The Executive Director of the Red River Basin Commission reviewed the commission's long-term flood solutions for the Red River Basin with the committee. The report includes long-term flood solution recommendations, conclusions and recommendations for actions, and funding timeline for project implementation costs along the Red River of the North and its tributaries. The committee learned the biggest risks are flooding in Fargo, Moorhead, and Devils Lake, and how to spend the required money effectively.

NORTH DAKOTA WATER COALITION

The Executive Director of the North Dakota Water Coalition briefed the committee on coalition activities throughout the interim. The coalition was formed in 1994 to implement the Vision 2000 recommendations to help build a stronger economy for the state. The mission of the coalition is to complete North Dakota's water infrastructure for economic growth and quality of life. The coalition brings together more than 40 water interests and related groups to help build grassroots understanding and support. Each biennium the coalition develops recommended water priorities as the state moves into a new legislative session. This process allows the water community to provide input to the State Water Commission, the Governor's office, and ultimately the Legislative Assembly. Under the current process, the commission maintains flexibility to maximize its efforts, and yet still be responsive to emergent critical water needs, such as those that have arisen within the last several years.

The Executive Director reported the 2013-15 coalition funding priorities were developed based upon estimated 2013-15 revenues of $375 million. In addition, the funding subcommittee developed additional options based upon an increase of $125 million in revenues totaling $500 million. Major funding initiatives identified include Devils Lake; Fargo flood control; general water management and flood control; irrigation; Missouri River flood control; municipal, rural, and industrial water supply; Northwest Area Water Supply Project; Red River Valley Water Supply Project; Sheyenne River flood control; Mouse River flood control; Southwest Pipeline Project; weather modification; and the Western Area Water Supply Project. The coalition's funding subcommittee recommendations were presented to the full coalition on September 10, 2012, and the full coalition voted to adopt the presented outline of cost-share priorities totaling $375 million as put forth by the subcommittee. However, at a meeting of the State Water Commission on September 17, 2012, it was announced the projected revenues were going to be higher than previously expected--closer to $500 million. At that time, the Governor and the commission adopted a motion to ask the coalition for supplemental funding requests for 2013-15 if additional revenue becomes available above and beyond the $375 million. The commission supports the concept of optional funding so it can work with a budget amount of $375 million and look at supplemental funding priorities above and beyond that total if the revenues are greater. The funding subcommittee met again on October 8, 2012, to discuss options for supplemental funding options for an additional $125 million in addition to the $375 million figure.

The Executive Director of the Rural Water Association reviewed rural and regional water system projects, their estimated cost, and funding requests. The total estimated cost of projects identified by the association is $85,691,633, and the funding request is $62,707,225.

IRRIGATION

Background

The first concerted effort to develop irrigation in North Dakota began in 1908 on lands near Trenton and Williston. These projects were designed and constructed by the then very new United States Bureau of Reclamation. Each of these projects diverted water from the Missouri River. At Trenton the land was on the Missouri River floodplain, and at Williston water was diverted north for several miles in the valley of the Little Muddy River. These projects were operational about 1911; but due to a number of difficulties, operations were

discontinued around 1916. At this same time, the Lower Yellowstone Project between Intake and Fairview, Montana, was also under construction. This project currently serves approximately 18,000 acres in McKenzie County.

The first irrigation district laws were enacted in 1917, and the authority to establish districts rested with the respective boards of county commissioners. The record is unclear as to when the first irrigation districts were established. However, the oldest currently operating districts are found in McKenzie County. One is related to the North Dakota part of the Lower Yellowstone Project, and the other is the Sioux Irrigation District located near Cartwright, and it was established in the mid-1930s.

Two other irrigation districts formed in the late 1930s and early 1940s were the Buford-Trenton and Lewis and Clark Irrigation Districts. The Buford-Trenton Irrigation District was a project constructed by the United States Bureau of Reclamation and consisted of approximately 15,000 acres. Approximately 5,000 acres were later purchased by the federal government for the construction of Garrison Dam. The district currently consists of approximately 11,000 acres. The Lewis and Clark District was a State Water Commission project, and it involved an area of approximately 5,000 acres on the south side of the Missouri River Valley on either side of United States Highway 85. The entire project area was also later purchased to make way for the construction of Garrison Dam.

In the 1950s and 1960s several irrigation districts were formed to utilize water from the Missouri, Yellowstone, and Heart Rivers. In addition, 12 districts were formed in conjunction with the Garrison Diversion Project which was then in advanced planning stages. With the exception of one district, all were created to serve as the operating entity for projects being constructed by the United States Bureau of Reclamation.

Between 1992 and 2003, eight irrigation districts were created. The Turtle Lake Irrigation District was formed to serve as the operating entity for a United States Bureau of Reclamation project authorized by the 1986 Garrison Reformulation Act. The Elk/Charbon Irrigation District was designed to divert water from the Missouri River to irrigate 5,000 acres in northwest McKenzie County. The Nesson Valley Irrigation District would have diverted water from Lake Sakakawea to irrigate approximately 7,500 acres in southeast Williams County. These projects have not been constructed. Other districts created, but not operational at this time, are Eastern Dakota in Cass County, Northeastern in Grand Forks County, Big Bend in Oliver County, and Horsehead in Emmons County.

The Central Dakota Irrigation District in Kidder County was formed when the AVIKO french fry plant was under construction at Jamestown. The Kidder County area along with northwestern Stutsman County had the soil and water resources needed for the production of irrigated potatoes. A group of producers formed the district to take advantage of the financing authorities through which more favorable terms could be obtained than those available to an individual. A substantial percentage of the 18,000 acres developed in the area was financed through the Central Dakota Irrigation District. The development utilizes individual wells and center pivot irrigation systems.

The majority of irrigation districts in North Dakota were created for the purpose of developing a central supply works to deliver water to individual farms. Many of the districts were to serve as the operating entity for United States Bureau of Reclamation projects. They include the Lower Yellowstone in McKenzie County, Buford-Trenton in Williams County, Western Heart in Grant County, and Fort Clark in Oliver County. The Dickey-Sargent District is the operator of the Oakes Test Area in Dickey County.

The State Water Commission was the developer of the water supply facilities for the Lewis and Clark Project and the Sioux Irrigation District in the late 1930s and 1940s. Since that time, the commission has not directly constructed facilities, but instead has a cost-share program for irrigation districts to develop and improve principal water supply works with technical assistance provided as needed. The commission approved a 40 percent cost-share for the principal water supply works for the Elk/Charbon and Nesson Valley Irrigation Districts; however, due to other difficulties, these projects have not been developed.

Irrigation is developed in two basic ways in North Dakota as well as in the other western states. It can be done by the individual producer who has suitable soil and a water supply on the farm. A water permit is first obtained from the State Engineer's office which authorizes the appropriation of water. The producer can then install the infrastructure to capture and apply the water to the land. The majority of the approximately 270,000 acres irrigated in the state were developed in this manner. Much of the water is supplied by ground water.

The second way is through an irrigation district where a central supply works is constructed to deliver water from one of the state's major rivers to land involving more than five owners. Such was the intent of the Garrison Diversion Project, which included 250,000 acres in the initial phase. The United States Bureau of Reclamation was in charge of constructing and financing the water supply works that would deliver water to the various irrigation districts. The project has been realigned and down-sized to include only a few thousand acres of irrigation. Through the realignment process the Bureau of Reclamation is no longer involved in the construction of facilities to furnish water for irrigation.

The Turtle Lake Irrigation District consists of approximately 14,000 acres designated by the United States Bureau of Reclamation as being well suited for irrigation. The Dakota Water Resources Act of 2000 authorized 23,700 acres to be developed using water from the McClusky Canal. Since the Bureau of Reclamation could no longer build new irrigation water supply works, the responsibility of moving ahead on the project fell on the Turtle Lake Irrigation District Board of Directors. The district was not willing to assume the responsibilities of canvassing all of the landowners, hiring engineers to design the water supply works, and

arranging financing. These are large responsibilities that the board did not want to assume because it did not have experience for addressing the engineering and financing aspects of the project. However, the Garrison Diversion Conservancy District had the capability to develop the project and became involved. This led to the enactment of 2011 House Bill No. 1318. It appears one of the issues that makes an irrigation district board of directors reluctant to take on the development of a proposed project is the amount of money involved and the complexity related to modern day irrigation development.

Testimony

The committee learned there are 27.5 million cropland acres in North Dakota, 272,000 of which are irrigated. Major irrigated crops include corn, wheat, soybeans, barley, edible beans, oats, flax, canola, sunflower, dried peas, lentils, alfalfa, potatoes, and sugar beets. In addition, several miscellaneous crops, such as mixed forage, onions, rye, safflower, grass, carrots, and millet, are irrigated. The committee learned the gross return per irrigated acre is three times that per nonirrigated acre. The counties with the most irrigated acres are Williams, Kidder, Ransom, and McKenzie. The committee also reviewed the Garrison Diversion Conservancy District's mile marker 7.5 irrigation project.

The committee learned when the irrigation study was approved, it was believed the state's irrigation laws were in need of a major overhaul. However, as the study progressed, the committee learned many irrigation districts operate under the old existing laws, and any change may be detrimental to their operation. Thus, the North Dakota Irrigation Association only recommended several small changes to the state's irrigation laws. One change is to clarify a majority of the members of an irrigation district board constitutes a quorum for the transaction of business. Another change is to allow irrigation districts to contract with the Garrison Diversion Conservancy District. Also, the association is recommending the bill draft relating to conservancy district irrigation special assessments, enacted by the Legislative Assembly in 2011, be amended to require plans and specifications must be certified by a registered professional engineer and the conservancy district irrigation special assessments legislation be made permanent.

Committee Consideration

The committee considered a bill draft to rename the Water-Related Topics Overview Committee the Water Topics Overview Committee, give the committee responsibility for overview of the Garrison Diversion Project, delete the requirement that the committee consist of 13 members, and make the committee a permanent statutory committee. The bill draft also clarifies a majority of the members of an irrigation district board constitutes a quorum for the transaction of business, and irrigation districts may contract with the Garrison Diversion Conservancy District. The bill draft also requires plans and specifications must be certified by a registered professional engineer, and the legislation relating to Garrison Diversion Conservancy District irrigation special assessments be extended for two years.

Recommendation

The committee recommends Senate Bill No. 2049 to make the Water Topics Overview Committee a permanent statutory committee, with responsibility to review the Garrison Diversion Project, and delete the membership restriction; clarify the quorum requirement of an irrigation district board; authorize irrigation districts to contract with the conservancy district; require plans to be certified by a registered professional engineer; and extend the expiration date of conservancy district irrigation special assessments legislation for two years.

WESTERN AREA WATER SUPPLY AUTHORITY

The Chairman of the Western Area Water Supply Authority updated the committee throughout the interim concerning progress on the project. The Chairman reported the population of northwestern North Dakota is growing exponentially, and pipelines already have been upsized north and south from the city of Williston. Rural water hookup requests have far exceeded original projections, having grown from 500 to over 6,000. The original business plan projected a population peak between 42,000 and 48,000. Currently, it is anticipated the project will serve as many as 75,000 people. Bulk industry water sales are projected to pay for approximately 80 percent of the project's original cost.

The Chairman reported the authority will be seeking $80 million during the 2013-15 biennium for funding Phase II(A) and Phase III. Of this total, $40 million will be loan funds and $40 million will be grant funds.

Representatives of the Independent Water Providers discussed concerns with the Western Area Water Supply Authority. To minimize impacts to private water providers, the Independent Water Providers is proposing any depot constructed by the authority should be limited to operating only two ports, even though each might be constructed with more than a two-port capacity to take advantage of cost efficiencies, and before operating more than two ports at any site, an objective assessment be made by the State Water Commission, or an independent third party approved by the commission, to verify the need for additional capacity and to verify the current need is not being met by the private sector and Western Area Water Supply Authority capacity under a two-port limit. The Independent Water Providers said this policy largely would resolve the main differences between the two organizations and set the stage for a cooperative relationship going into the 2013 legislative session. Additional policy suggestions included a change in governance structure and reconsideration of the project's funding mechanism.

SOUTHWEST WATER AUTHORITY

The committee received an update from the Manger/CEO of the Southwest Water Authority. The Southwest Pipeline Project serves more than

48,000 people in southwestern North Dakota. The population of southwestern North Dakota and water use for both residential and industrial purposes is increasing rapidly. The Southwest Pipeline Project has identified $78,225,000 in expenditures for the 2013-15 biennium. The remaining items for the Southwest Pipeline Project total $57.85 million. Through September 30, 2012, the Southwest Water Authority has repaid $31,696,460.48 in the form of capital repayments. Total funding for the Southwest Pipeline Project has been $205.94 million as of December 31, 2011. Funding sources include state funding, grants, and bonds repaid by water users.

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 the statutory charge to review workers' compensation claims, under Section 65-02-30 the committee is charged with selecting up to four of the elements to be included in the quadrennial performance evaluation of Workforce Safety and Insurance (WSI). Under this same law, the committee is charged with receiving a presentation of the performance evaluation report and any actions taken resulting from the performance evaluation report. However, the next performance evaluation is not scheduled to take place until the 2013-14 interim so the committee did not take any action on this statutory charge.

In addition to the statutory charges, the Workers' Compensation Review Committee is 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 (Section 65-05.1-06.3); and
3. Receive a report from WSI on recommendations based on a biennial safety review of Roughrider Industries work programs and a biennial performance review of the programs of modified workers' compensation coverage by WSI (Section 65-06.2-09)

Committee members were Representatives Gary R. Sukut (Chairman), Bill Amerman, and George J. Keiser and Senators George L. Nodland, Mac Schneider, and Rich Wardner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63rd Legislative Assembly.

CLAIM REVIEW

General Background

The state laws addressing workers' compensation in North Dakota are found primarily 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 of the workers' 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 law provides the committee shall 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 would have 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 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:

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.

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 originally provided a graduated schedule for vision impairments beginning at 20/80 corrected visual acuity. As passed, the bill provided 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.

2009-10 Interim

During the 2009-10 interim, the Workers' Compensation Review Committee reviewed four workers' compensation claims. The committee recommended the following seven bills:

House Bill No. 1050

This bill created a vocational rehabilitation grant program to promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process. This bill passed.

House Bill No. 1051

This bill provided 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. This bill passed.

House Bill No. 1052

This bill would have provided that previously confidential information of WSI data regarding medical providers relating to medical prescriptions and patterns of treatment is open to the public and would have clarified what information relating to managed care programs is confidential. This bill failed in the House.

House Bill No. 1053

This bill would have limited 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. This bill failed in the House.

House Bill No. 1054

This bill would have provided 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. This bill failed in the Senate.

House Bill No. 1055

This bill provided 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 amended the workers' compensation PPI multiplier schedule to provide for qualification of a PPI award beginning at 14 percent whole body impairment. This bill passed as amended.

House Bill No. 1056

This bill decreased the frequency of WSI performance evaluations from once each biennium to once every four years. This bill passed as amended.

Review Procedure

The committee began the interim by establishing a procedure and protocol for conducting its charge of reviewing claims. The protocol adopted was based on the protocol and application packet used during the 2009-10 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 submit their claims. The committee published the application packet on the legislative branch website. 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 Legislative Council staff contacted the injured employee 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 both of the 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 injured employee, a representative of the injured employee, or both 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.

Both of the claims reviewed were 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

The following is a summary of events of the injured employee's workers' compensation case:

- The injured employee filed an application with WSI for workers' compensation benefits on June 12, 2008, for an injury sustained to her left index finger. She sustained the injury while working as a department lead at Kmart when she closed the safe door, catching her finger inside the safe door.
- On June 13, 2008, WSI accepted the workers' compensation claim and awarded wage-loss benefits from June 13, 2008, through July 13, 2008, at which time the injured employee returned to work.
- On August 1, 2008, the injured employee requested PPI benefits for the injury to her finger.
- On September 19, 2008, WSI reviewed the medical records to determine whether the injury would result in an impairment rating of at least 16 percent whole body. The review concluded the injury would not meet the 16 percent required whole body impairment and would not qualify for a PPI award under the scheduled injury subsection of the law.
- On October 17, 2008, the injured employee made a timely appeal and submitted a request for reconsideration and to be granted a PPI evaluation.
- On November 25, 2008, WSI issued an order denying the request, stating the injured employee did not meet the PPI requirements under Section 65-05-12.2. The order found that WSI had not received any objective medical evidence indicating the claimant's work injury would result in a 16 percent whole body impairment rating. The order included a finding of fact that:

  > According to the 5th Edition of the American Medical Association (AMA) Guides to Permanent Partial Impairment, the impairment for the amputation would equate to approximately 3% WP (approximately 30% digit = 6% hand = 5% EU = 3% WP). The above calculated impairment from the Guides does not take into consideration of the ROM or sensory loss of the remaining digit. However, an amputation of the entire 1st index finger, per the Guides equates to 11% WP.
- On December 24, 2008, the injured employee made a timely appeal and on January 6, 2009, requested the assistance of the Decision Review Office.
- On February 17, 2009, the Decision Review Office issued a Certificate of Completion indicating no change in decision to the order. At this point the injured employee stopped the appeal process and the order became final.

Issues for Review

The injured employee raised the following issues for review:

- Although the injured employee completed her college education in 2010 and has since entered the workforce as a professional; as a result of her work injury, she has permanent disabilities for which she thinks she should be compensated by WSI. Due to the partial amputation of her finger, she is unable to key with her injured hand and therefore, is unqualified for jobs that require any significant amount of keying. The injured employee stated that not only will the injury be a disability that impacts her ability to qualify for jobs the rest of her life, but she also has ongoing physical issues due to her injury, including continued pain in her finger and a constant chill in her finger.
- A PPI payment received under the schedule for amputations is not adequate. She stated that even if she would have been awarded PPI benefits for an amputation, the amount of the benefit would not have adequately compensated her for her loss.
- The injured employee stated she would like the law to be changed to allow for a more individualized analysis of PPI determinations. The analysis should consider factors, such as work requirements, educational background, and career goals. She said if WSI would have evaluated the specific circumstances of her claim, WSI would have found that with the injury occurring when she was age 48, she had 20 years to 30 years remaining in the workforce.
- The WSI appeal process is not user-friendly and is not easy for a layperson to understand and navigate.

Workforce Safety and Insurance Response

The WSI representative reviewed the three types of benefits available through the state's workers' compensation system--disability benefits, medical benefits, and PPI benefits. Disability benefits are cash benefits designed to address loss of wages, whereas the PPI benefits are designed to compensate the injured employee for a permanent injury. Permanent partial impairment benefits are designed to be an objective measurement of whole body impairment which is based on how the permanent injury impacts the activities of daily living. In addition to the whole body impairment schedule, the PPI schedule allows an injured employee to qualify based on a list of amputations.

A representative of WSI stated if the injured employee had lost the first joint on her finger, which she did not, she would have qualified for PPI benefits based on the PPI amputation schedule. Because the injured employee returned to work at or above her preinjury employment level, her WSI claim was closed. The PPI amputation schedule does not address loss of use; however, the PPI evaluation would consider loss of use in determining the degree of whole body impairment.

The committee was informed North Dakota's workers' compensation benefits do not take into consideration whether an injured employee may be a college student at the time of the injury and working to improve his or her skills and earning potential.

Committee Considerations

The committee members discussed the issues raised by the injured employee as part of the first claim review. Committee members considered a weakness in the state's workers' compensation system when an employee is injured as a college student, is evaluated based on the job the employee was performing at the time of the injury, and there is no consideration of the student's chosen field of study or potential. However, the committee recognized the difficulty of underwriting prospective wage loss.

The committee recognized the PPI amputation schedule has an element of arbitrariness as it relates to a near amputation that is nearly the same as a complete amputation; however a near amputation does not qualify for PPI benefits.

The committee considered how other states address similar PPI issues, and learned that North Dakota's treatment of PPI is unique and as such, it is difficult to compare and contrast to systems of other states.

Second Claim

Case Summary

The following is a summary of events of the injured employee's workers' compensation case:

- On November 29, 2007, the claimant incurred a workplace injury to his lumbar spine. The injured employee filed an application with WSI and WSI accepted the claim and awarded benefits. On December 19, 2007, the injured employee was released to work with no restrictions.
- April 2010, the employee experienced an injury to his back which happened at work but which he did not immediately report to WSI or his employer. He treated with his chiropractor and WSI ultimately denied this claim because the injured employee did not seek medical treatment with his employer's designated medical provider.
- On May 4, 2010, the injured employee once again filed an application for workers' compensation benefits for another workplace injury to his lumbar spine. On the date of this injury, the injured employee was seen by the employer's designated medical provider, an advanced practice registered nurse in Dickinson. The injured employee was diagnosed with a thoracic spine strain and was released to work with restrictions.
- On May 6, 2010, the injured employee was seen by a physical therapist. The injured employee participated in several physical therapy treatments with limited long-term success. On June 7, 2010, the advanced practice registered nurse diagnosed the injured employee with lumbar/low back pain with intermittent mild numbness and tingling of the right leg and foot. The injured employee continued receiving physical therapy treatment.
- The injured employee reported he experienced worsening of the condition, including leg numbness. He said at this time he contacted the designated medical provider to request a referral to a chiropractor and was told the numbness likely was not related to the work injury. He consulted with his Dickinson chiropractor, who was not the employer's designated medical provider, and this chiropractor told him the designated medical provider likely would not provide a referral for chiropractic treatment.
- On June 11, 2010, WSI accepted the claim for a thoracic and lumbar spine sprain/strain and paid the associated medical expenses.
- On June 24, 2010, the injured employee was seen by a physician in Bismarck. The physician diagnosed the injured employee with discogenic pain with possible disc protrusion and suggested lumbar spine x-rays, lumbar spine magnetic resonance imaging (MRI) on closed scanner, and followup. The physician did not have any specific treatment or work ability recommendations at that time.
- On June 30, 2010, the physician in Bismarck saw the injured employee again and reviewed x-rays and an MRI. The physician clarified the consultation was a consultation relationship and the physician was not the injured employee's treating physician. This physician was a consulting physician at WSI, and the records showed the physician took affirmative steps to make sure the injured employee understood a relationship with WSI existed. The physician reported the injured employee had degenerative disc disease at L5-S1, low-grade spondylolisthesis, and facet joint osteoarthritis with mild disc bulging.
- On June 16, 2011, the physician spoke to the injured employee on the telephone and said he would provide a report that indicates the physician felt there was no medical contraindication to chiropractic treatment and that chiropractic treatment would be a reasonable alternative for treatment of the injured employee's lumbar spine condition. Additionally, the physician agreed to contact the Occupational Health Clinic in Dickinson to help identify a replacement primary provider for the injured employee's lumbar spine problems.
- On June 29, 2011, the injured employee was referred to a chiropractor in Bismarck for review of his chiropractic treatment. The record does not reflect that the chiropractor notified the injured employee that the chiropractor also was a consultant for WSI. The chiropractor diagnosed the injured employee with:

  Nonallopathic lesions/segmental dysfunction, cervical spine region, neck pain not related to WSI claim.

  Low back pain related to WSI claim.

The chiropractor opined that the lower back problems were no longer directly related to the work injury and the injured employee's neck problems never were related to his work injury.

- On October 2, 2011, a WSI medical consultant conducted a records review and opined the current medical treatment was not related to the May 4, 2010, work injury. He determined the June 30, 2010, MRI findings were not related to the May 4, 2010, injury.
- On November 15, 2011, WSI issued a notice of decision denying any further liability and no further workers' compensation benefits would be payable on this claim after June 17, 2010.
- The injured employee made a timely request for reconsideration, and on February 7, 2012, WSI issued an order supporting its decision. The injured employee did not appeal this decision, and it became final.

Issues for Review

The injured employee raised the following issues for the committee to consider:

- The injured employee testified the whole workers' compensation process seemed to be like a game under which the injured employee is forced to play without knowing the rules. He said under the rules of this game, it is to WSI's benefit to keep the injured employee as ignorant as possible. He testified it seems unreasonable and unfair to expect the injured employee to study and be fluent in the state's workers' compensation law.
- The injured employee took issue with the denial of the April 2010 injury because his employer did not inform him ahead of time of the designated medical provider requirement.
- The injured employee took issue with having to be treated by his employer's designated medical provider instead of his own medical providers. He reported his personal medical providers, not the employer's designated medical providers, informed him that his pelvis was out of alignment and his neck was out of alignment and that the neck pain was directly related to his work injury to his back. This medical provider told him that although it is possible his back and neck problems were related to his 2007 work injury, it would be impossible to prove.
- The injured employee reported the difficulty he experienced getting referrals to the appropriate specialists and having the appropriate tests conducted. He reported that when he did ultimately receive a referral to a chiropractor that was covered through the designated medical provider program, he was told the neck pain was likely a latent condition caused by playing hockey. The injured employee reported early 2005 was the last time he played hockey. He stated if WSI can claim a latent injury, then WSI can pretty much make any claim they want and avoid liability anytime it wants.
- The injured employee voiced concern that two of the doctors he saw are consultants for WSI, and this seems like an improper conflict of interest.
- The injured employee extensively reviewed the types of treatment he received for his back and neck injuries and reviewed the surgical interventions he has undergone and that he may undergo in the future. He testified WSI limits coverage for these procedures; however, if private insurance is willing to cover these procedures, WSI should cover them as well.
- The injured employee testified he takes issue with the designated medical provider program. He said unlike a typical preferred provider provision under private health insurance, which designates the preferred network of providers, the WSI program actually identifies an individual provider. In his case, he said, he was limited to the advanced practice registered nurse in Dickinson for his primary care for his work injury. Additionally, he questioned whether the program actually accomplished the goal of helping employers create safer work environments.

The injured employee listed the following suggested changes to the state's workers' compensation system:

- Patient positive executive with veto power to accept claims;
- Transparency on cost of services;
- Mandatory coverage of second opinion of choice;
- Mandatory coverage to see a physician - No referral needed;
- Direct access to claims adjuster;
- Workforce Safety and Insurance subject to the authority of the courts; and
- Capitalistic system:

  Permit private insurance to compete for rates - Learn from South Dakota; and

  Make medical providers compete for care services - Eliminate injury monopolies.

Workforce Safety and Insurance Response

The committee reviewed the law allowing for WSI's designated medical provider program--NDCC Sections 65-05-28.1 and 65-05-28.2, as well as the WSI web page that addresses the designated medical provider program, and a designated medical provider program brochure.

A representative of WSI testified that under the workers' compensation system, one of the roles of a medical provider is to determine whether an injury is work-related. The system is designed so the employee has the burden to prove entitlement to benefits. However, WSI decisions are appealable.

A representative of WSI testified the designated medical provider program is designed to allow an employer to designate a medical provider and thereby allow the employer to establish a relationship and ongoing communications with that medical provider.

Under the medical provider program, WSI does not play a role in the employer selecting a designated medical provider; however, WSI does inform employers

of the right to participate in the program and does take efforts to educate employers of the terms of the program.

Committee Considerations

The committee questioned whether WSI's designated medical provider program that was implemented following 1995 enactment of the preferred provider legislation has been successful in accomplishing what it was intended to accomplish.

The committee members questioned whether the preferred providers selected by employers provide injured employees with the appropriate medical services.

The committee members raised the concern that the designated medical provider program may place too heavy a burden on employees and that employees may not be receiving adequate notice to make informed decisions.

The committee reviewed the notice requirements employers are required to provide employees under the designated medical provider program. Committee members voiced their concerns that strengthening statutory notice requirements may be meaningless if there are no enforcement mechanisms.

A representative of WSI testified that WSI does not take an active role in enforcing the requirement that employers post the notice at a worksite. Typically, WSI only becomes aware of an employer's failure to comply with the posting requirement if a claim is made and the issue is brought to WSI's attention.

A representative of WSI testified there has been a change in the role WSI takes in the relationship between an employer and an employee, with WSI's role becoming less regulatory over time.

Workforce Safety and Insurance Status Updates

In order to keep apprised of current events at WSI, at each committee meeting the committee received status updates on timely topics and on topics raised as part of the claim review process.

2011 Legislation and 2013 Proposals

The committee received an overview of workers' compensation-related bills that passed during the 2011 legislative session and a summary of WSI's proposed legislative package for 2013.

Appeal Process

The committee received an overview of the appeal process used for appealing WSI decisions.

Special Investigations Unit

The committee received an overview of WSI's Special Investigations Unit.

Workforce Safety and Insurance Board of Directors

The Committee received a status report on the activities of the Workforce Safety and Insurance Board of Directors. The committee received an overview of the organization of the board and how the board conducts meetings and received an overview of the board's premium rate recommendation, dividend recommendation, investment asset allocation recommendation, and legislative recommendations.

Workforce Safety and Insurance Complaints

The committee received multiple updates on the status of WSI's response to two hotline calls WSI received in August 2011, relating to a concern that WSI was placing pressure on its medical director to change his medical opinion and relating to a concern that WSI was erasing claimant notepad entries.

A representative of WSI testified that in response to the reports, WSI revised its policy to provide that if an injured employee's notepad entry contains an entry that was placed in the wrong claimant's file, WSI will move that entry to the correct claimant's file. Under this proposed new policy, there will be no reason for WSI to "delete" a notepad entry, only "move" an entry if it is made in the wrong claimant's file. Additionally, the committee received testimony that WSI is taking steps to standardize the format used for physicians who provide medical opinions for WSI.

Pain Management Medication

The committee received multiple updates on activities WSI is pursuing to address issues associated with pain management medication.

The committee received a report on the related activities of the interim Health Care Reform Review Committee. The interim Health Care Reform Review Committee tracked this issue during the interim and was informed that the State Board of Pharmacy, North Dakota Medical Association, and State Board of Medical Examiners will request the Legislative Assembly not to mandate use of the prescription drug monitoring program but instead, allow the industry an opportunity to take steps to increase use of the program. Additionally, the interim Health Care Reform Review Committee received testimony that the State Board of Medical Examiners is considering administrative rules addressing the prescription of opioids and the board is aware the Legislative Assembly is concerned whether the parties will take appropriate actions to address the concerns. The Health Care Reform Review Committee received testimony that the medical community needs the services provided by the pain specialists and does not want the Legislative Assembly or anyone else to shut down the pain specialists.

Permanent Partial Impairment

The committee received data relating to PPI payouts at different levels of impairment and reviewed the process used when parties to a claim dispute a final PPI determination.

Coverage of Volunteers

The committee received an overview of how the state's workers' compensation system provides coverage of volunteers and emergency volunteers.

Independent Contractors

The committee reviewed the process by which WSI determines whether a worker is an employee or an

independent contractor for purposes of workers' compensation coverage.

Claim Trends

The committee received several updates on WSI claim trends. The trends reported focused on the growth of employment in the oilfield and associated issues, including the increased number of employer accounts, increased number of claims filed, and the impact this growth has on WSI's ability to process these claims. Additionally, the committee received testimony from representatives of WSI regarding some unique issues related to the growth of employment in the oilfield, such as the frequency in which injured employees leave the state after experiencing a workplace injury.

Computer System Replacement Project

The committee received updates on the status of WSI's computer system replacement project.

2010 WSI Performance Evaluation

The committee received updates on the status of WSI's implementation of the 2010 WSI performance evaluation recommendations.

Recommendations

Designated Medical Provider Program

The committee recommends House Bill No. 1051 to provide for a Workers' Compensation Review Committee study of WSI's designated medical provider program. The bill provides that during the 2013-14 interim, the committee is charged with studying WSI's designated medical provider program; however, the committee may comply with the study charge by including the study as one of the elements of the WSI independent performance evaluation conducted under NDCC Section 65-03-30.

The committee recommends House Bill No. 1052 to strengthen an employer's duty to inform employees of the employer's decision to participate in the designated medical provider program.

Transparency

The committee recommends House Bill No. 1053 to make more transparent a medical provider's professional relationship with WSI. The bill creates a new section of law that provides if WSI enters a professional relationship with a medical provider, one of the terms of that relationship is that at the time of treatment of a patient who is an injured employee, the medical provider has an obligation to inform that patient that the medical provider has a professional relationship with WSI.

Permanent Partial Impairment Determinations

The committee discussed a workers' compensation situation in which a dispute arose over the amount of whole body impairment in a PPI determination and the independent doctor who was assigned to review the claim determined zero percent whole body impairment. Under existing law, if an injured employee's medical provider determined a whole body impairment and WSI's medical provider determined a different whole body impairment, the determination of the independent doctor selected under Section 65-05-12.2(12) is the determination that is presumed and which can be rebutted only by clear and convincing evidence--regardless of whether that final determination is more than, less than, equal to, or someplace between the determinations of the injured employee's and WSI's medical providers.

The committee questioned whether public policy is furthered by providing a presumption for an independent doctor's determination that is higher than or lower than the parties' determinations.

The committee recommends Senate Bill No. 2050 to provide if a PPI determination is contested, the determination of the independent doctor is presumed if it is not more than and not less than the determinations of the injured employee's and WSI's medical providers; however, if the independent doctor's determination is more than the injured employee's medical provider's determination, the presumed whole body impairment is the determination of the injured employee's medical provider, and if the independent doctor's determination is less than WSI's medical provider's determination, the presumed whole body impairment is the determination of WSI's medical provider.

REPORTS

Rehabilitation Services Pilot Program Report

Pursuant to Section 65-05.1-06.3, the committee received reports 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 process of implementing the recent changes to the WSI rehabilitation services, including implementation of 2011 Senate Bill No. 2114, which expanded the WSI scholarship program to apply to the spouse and child of a catastrophically injured employee and 2011 House Bill No. 1050, which provided grants to entities that promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process regarding WSI rehabilitation services. Additionally, WSI changed from contracting for vocational rehabilitation services to providing these services in-house. Finally, the report indicated WSI is collecting data from injured employees regarding feedback on WSI's vocational rehabilitation programs.

Modified Workers' Compensation Program Performance Audit and Roughrider Industries Safety Audit

Pursuant to Section 65-06.2-09, the committee received a report from WSI 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.

No significant deficiencies were identified regarding the intent, effectiveness, and legal requirements

applicable to the modified workers' compensation program. The review concluded that the desired results and effectiveness of the program are being achieved.

Safety Grants Report

Pursuant to Section 65-03-05, the committee received the biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE MANAGEMENT FOR THE 2011-12 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Management for study during the 2011-12 interim under the authority of North Dakota Century Code (NDCC) Section 54-35-02:

Bill or Resolution No.	Subject Matter (Committee)
1003 § 23	Study the ability of the University of North Dakota School of Medicine and Health Sciences to meet the health care needs of the state, including a review of the health care needs of the state, options to address the health care needs of the state, and the feasibility and desirability of expanding the School of Medicine to meet the health care needs of the state (Health Services Committee)
1004 § 8	Study the regional public health network pilot project conducted during the 2009-11 biennium, including services provided, effects of the project on participating local public health units, efficiencies achieved in providing services, cost-savings to state and local governments, and possible improvements to the program (Health Services Committee)
1011 § 5	Study the feasibility and desirability of relocating the Highway Patrol training academy or portions of the training academy and review options for relocating the training academy, options for relocating the emergency operations vehicle training course, and options for constructing a Highway Patrol shooting range - Amended by Legislative Management directive to include study of options for financial participation by local users of the facilities (Government Services Committee)
1012 § 13	Study the use of state-owned airplanes, including a review of airplanes owned by state agencies, the justification for each airplane, the frequency of use of each airplane, options for purchasing or leasing new airplanes, and the feasibility and desirability of requiring state airplanes to be managed by State Fleet Services - Amended by Legislative Management directive to exclude use of state-owned airplanes by the University of North Dakota School of Aviation (Government Services Committee)
1014 § 5	Study primacy in the administration of federal Environmental Protection Agency regulations (Natural Resources Committee)
1033 § 3	Study issues affecting higher education, including higher education funding mechanisms and higher education budget methods (Higher Education Committee)
1036 § 1	Study developmental education issues, including a review with the Department of Public Instruction and the North Dakota University System of the secondary schools attended by students requiring developmental education, the reasons students need developmental education, efforts to reduce the number of developmental education students at higher education institutions, the alignment of elementary and secondary education standards, curriculum, and textbooks with higher education admissions standards, and the best practices for alleviating developmental education at higher education institutions (Higher Education Committee)
1046 § 5	Study potash mining and taxation issues (Natural Resources Committee)
1047 § 16	Study corporate income taxes, corporate income apportionment factors, and potential impact of federal legislation on state corporate income taxes - Amended by Legislative Management directive to exclude study of financial institutions taxes (Taxation Committee)
1152 § 3	Study the future of health care delivery in the state, including focus on the delivery of health care in rural areas of the state and include input from the School of Medicine and Health Sciences Center for Rural Health, hospitals, and the medical community (Health Services Committee)
1199 § 1	Contract with a consultant to study guardianship services for vulnerable adults in the state. The study must include an analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs associated with providing guardianship services; the entities responsible for guardianship costs; and the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services. The consultant shall provide periodic reports and shall provide the final report and recommendations regarding the study to the Legislative Management before June 1, 2012 - Amended by Legislative Management directive to include the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services (Human Services Committee)
1246 § 3	Study the feasibility and desirability of extending the sales tax exemption on purchases of tangible property to all charitable nonprofit organizations so that all such organizations are treated equally and fairly under state law; and may undertake a comparative analysis of the efficacy of sales tax exemptions and rate reductions, including, for each exemption or reduction, a detailed analysis of the fiscal impact to the state; benefits to the state economy from eliminating or retaining the exemption or rate reduction; the relationship of the exemption or rate

Bill or Resolution No.	Subject Matter (Committee)
	reduction to tax policies of other states and to federal or state laws or regulations; and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns (Taxation Committee)
1252 § 1	Monitor the impact of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010; rules adopted by federal agencies as a result of that legislation; and any amendments to that legislation (Health Care Reform Review Committee)
1267 § 1	Develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election (Legislative Redistricting Committee)
1318 § 1	Review the state's irrigation laws and rules and evaluate the process of prioritization of water projects (Water-Related Topics Overview Committee)
1322 § 3	Study use of special assessments for public improvements, use and administration of special assessments across the state, and alternative funding mechanisms available, with emphasis on imposition and relative rate of special assessments against agricultural property, and including examination of agricultural property tax classification and assessment issues, with emphasis on these issues within and near city boundaries (Taxation Committee)
1365 § 1	Study statutes of limitation and venue requirements for civil actions in North Dakota, including a review of the limitation on the length of time that has passed since a cause of action arose and whether the time limitations in current law remain appropriate or should be changed, the extent to which claims are filed in North Dakota courts for claims otherwise prohibited in other states due to the relevant statute of limitation having expired, and a review of the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state (Judiciary Committee)
1417 § 1	Study the feasibility and desirability of exempting purchases by health-related clinics from sales and use taxes, including what circumstances, if any, purchases by health-related clinics should be exempt from sales and use taxes (Taxation Committee)
1442 § 1	Study regulations of drivers and of motor vehicles in the North Dakota Century Code for consistency, clarity, and substance (Transportation Committee)
2006 § 6	Study the state's income tax credits, including an inventory of all of the state's income tax credits, a review of the nature of each credit, an indication of the targeted class of recipients of each credit, an analysis of possible barriers to using the credits, an analysis of possible gaps and overlaps in the state's income tax credits, the relationship of state income tax credits to federal tax policy, and a review of the effectiveness of each credit (Taxation Committee)
2012 § 9	Study and evaluate the state's qualified service provider system (Human Services 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, and considering sustainability of state-funded property tax relief in view of the compounding effect of ongoing property taxable valuation increases (amended by 2011 House Bill No. 1047, Section 15) (Taxation Committee)
2042 § 5	Study the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming (Judiciary Committee)
2044 § 3	Study motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties (Advisory Commission on Intergovernmental Relations)
2100 § 3	Study the statutory provisions setting compensation rates for members of executive branch boards and commissions to determine whether it may be desirable to standardize some or all of the compensation rate provisions (Administrative Rules Committee)
2125 § 1	Study the feasibility and desirability of adopting the Uniform Electronic Recording of Custodial Interrogations Act (Judiciary Committee)
2150 § 40	Examine short-term and longer-term state and local involvement in funding elementary and secondary education (Education Funding and Taxation Committee)
2234 § 1	Study various mechanisms for improving coordination and consultation regarding federal designation over land or water resources in North Dakota (Natural Resources Committee)
2268 § 2	Study the current system for the diagnosis of, early treatment of, care for, and education of individuals with autism spectrum disorder, including a review of a sliding fee scale for payment of services and the value of services

Bill or Resolution No.	Subject Matter (Committee)
	provided; consideration of the recommendations of the Autism Spectrum Disorder Task Force; and input from stakeholders in the private and public sectors, including families affected by autism spectrum disorder, insurers, educators, treatment providers, early childhood service providers, caretakers, and nonprofit intermediate care facilities for individuals with intellectual disabilities (Human Services Committee)
2281 § 2	Study concussion management with respect to youth athletics, including the nature, scope, and applicability of programs designed to prevent or eliminate concussions (Education Funding and Taxation Committee)
2302 § 3	Develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the State Investment Board (Legacy and Budget Stabilization Fund Advisory Board)
2305 § 1	Study the issue of juvenile court jurisdiction and the adult court transfer process and whether any additional juvenile court jurisdictional extensions would serve the best interests of the child and the public in cases in which the child is close to the age of majority (Judiciary Committee)
2336 § 1 (2009)	Legislative overview of water-related topics and related matters for any necessary discussions with adjacent states on water-related topics (Water-Related Topics Overview Committee)
2351 § 2	Study the assessment of mandatory fees and fees for optional purposes or services by institutions under the control of the State Board of Higher Education, including the manner in which such fees are determined, identified, and justified and whether the programs, purposes, services, and activities supported by such fees should in fact be supported by tuition dollars, legislative appropriations, or other public or private funding sources (Higher Education Committee)
2356 § 2	Study use of special assessments for public improvements, use and administration of special assessments across the state, and alternative funding mechanisms available and possible processes and procedures that would facilitate a transition to any recommended alternative funding mechanisms (Taxation Committee)
2371 § 28	Receive a report from the Industrial Commission regarding the status of any litigation or other administrative proceedings associated with the United States Environmental Protection Agency's effort to regulate hydraulic fracturing (Budget Section)
3001	Study North Dakota 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)
3007	Study eminent domain laws as they relate to pipeline siting (Energy Development and Transmission Committee)
3011	Study the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act (Judiciary Committee)
3030	Study the feasibility and desirability of requiring use of cigarette tax stamps (Taxation Committee)
3032	Study the needs of, economic values of, and methods to improve access roadways to recreational, tourist, and historical sites in North Dakota (Transportation Committee)
4001	Study the imposition of fees by courts at sentencing and other fees that are imposed upon offenders (Commission on Alternatives to Incarceration)
4005	Study the impact of the Patient Protection and Affordable Care Act on the Comprehensive Health Association of North Dakota and the statutes governing the Comprehensive Health Association of North Dakota (Health Care Reform Review Committee)
4012	Study the feasibility and desirability of placing the entire Fort Berthold Reservation in a single public health unit (Health Services Committee)
4020	Study the causes of the increases in Department of Human Services' caseloads and program utilization and the impact of federal health care reform (Human Services Committee)

NDCC 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)
4-35.2-04	Determine when the Agriculture Commissioner must submit a biennial report

NDCC Citation	Subject Matter (Committee)
	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 ethanol 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)
15-10-47	Receive reports from the Office of Management and Budget regarding the State Board of Higher Education's monthly project variance reports regarding construction projects valued at more than $250,000 (Budget Section)
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 (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 - Repealed effective August 1, 2023 (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 - Repealed effective August 1, 2023 (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 Funding and Taxation Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports (Education Funding and Taxation 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 Funding and Taxation 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 (Higher 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 (Information Technology 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 Funding and Taxation 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 Funding and Taxation Committee)
15.1-21-10	Receive from the Superintendent of Public

NDCC Citation	Subject Matter (Committee)
	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 Funding and Taxation 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)
17-05-13	Receive written report from the North Dakota Transmission Authority each biennium (Energy Development and Transmission Committee)
17-07-01	Receive biennial report from the Energy Policy Commission and its recommendations to the state energy policy (Energy Development and Transmission 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 (Health Services Committee)
19-03.1-44	Receive report from the Attorney General before July 1 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 (Judiciary 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)
21-10-11	Receive at least semiannual reports from the Legacy and Budget Stabilization Fund Advisory Board (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 standard procedures for administrative agency compliance with notice requirements of proposed rulemaking (Administrative Rules Committee)
28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)
28-32-18	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)
37-17.1-27	Approve, with the Emergency Commission, use of the state disaster relief fund to provide the required state share of funding for expenses associated with presidential-declared disasters in the state (Budget Section)
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 (Taxation 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 ethanol 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	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)
47-30.1-24.1	Approve state agency relinquishment of unclaimed property belonging to that agency (Budget Section)

NDCC Citation	Subject Matter (Committee)
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)
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 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 (Judiciary 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 (Human Services 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 (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 Services 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 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 (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)
54-10-01	Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit of a state agency

NDCC Citation	Subject Matter (Committee)
	(Legislative Audit and Fiscal Review Committee)
54-10-01	Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review 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)
54-11-01	Receive report from the State Treasurer, within 90 days of the beginning of each fiscal year, regarding all warrants and checks outstanding for more than 90 days and less than three years (Budget Section)
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)

NDCC Citation	Subject Matter (Committee)
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 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)
54-27-27	Receive report from the Office of Management and Budget at each meeting of the Budget Section regarding the reports received from state agencies, other than entities under the control of the State Board of Higher Education, that have applied for federal grants estimated to be $25,000 or more (Budget Section)
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)

NDCC Citation	Subject Matter (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	Review uniform laws recommended by the Commission on Uniform State Laws (Judiciary Committee)
54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review 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	Legislative overview of water-related topics and related matters and any necessary discussions with adjacent states on water-related topics (until December 1, 2013) (Water-Related Topics Overview Committee)
54-35-02.7	Review during the 2011-12 interim the state's irrigation laws and rules and evaluate the process of the prioritization of water projects (until December 1, 2013) (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 legislative 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 (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, human services, education, corrections, and issues related to the promotion of economic development (until August 1, 2013) (Tribal and State Relations Committee)
54-35-23	Study whether members of the North Dakota Tribal Governments' Task Force should be voting members of the committee (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)

NDCC Citation	Subject Matter (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)
54-44-16	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)
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)

NDCC Citation	Subject Matter (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 annual report from the Information Technology Department (Information Technology Committee)
54-59-19	Receive summary of annual report from the Information Technology Department (Budget Section)
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)
54-60-27	Receive report from the Division of Workforce Development on the use of funding provided for the higher education electronic portfolio system pilot program (expires July 1, 2013) (Budget Section)
54-60.1-07	Receive the compilation and summary of state grantor reports filed annually by the Department of Commerce and the reports of state agencies that award business incentives for the previous calendar year (Taxation 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 (Judiciary Committee)
54-65-03	Receive annual audits from a center of research excellence receiving funds under Chapter 54-65 on funds distributed to the center (Budget Section)
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 recommendation regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers (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

NDCC Citation	Subject Matter (Committee)
	receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended (Taxation Committee)
57-51.2-04	Receive report from the Governor describing the negotiations and terms of any agreement between the Governor and 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 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)
61-40-09	Determine whether the Western Area Water Supply Authority is unable to reimburse the state, due to default on the authority's bonds, in the time period required by the Budget Section, the Budget Section may give written notice to the authority that the state has taken possession and ownership of the water system and the liabilities of the authority; and approve the State Water Commission's plan to return governance to the authority (Budget Section)
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 quadrennial performance evaluation of Workforce Safety and Insurance and select no more than four elements for inclusion in the performance evaluation (Workers' Compensation Review 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	Receive report from Workforce Safety and Insurance on recommendations based on a biennial safety review of Roughrider Industries work programs and a biennial performance review of the program of modified workers' compensation coverage by Workforce Safety and Insurance (Workers' Compensation Review 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 29 § 5	Administer appropriation for legislative wing equipment and improvements (Legislative Procedure and Arrangements 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 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)

2011 Session Laws Citation	Subject Matter (Committee)
Chapter 1 § 6	Administer appropriation for legislative committee room renovations and improvements (Legislative Procedure and Arrangements Committee)
Chapter 3 § 7	Receive report from the North Dakota University System regarding any funds expended for the University System and

2011 Session Laws Citation	Subject Matter (Committee)
	University of North Dakota joint information technology building project (Budget Section)
Chapter 3 § 8	Receive report from North Dakota State University regarding the status of the Minard Hall project and authorize North Dakota State University to increase spending authorization for the project (Budget Section)
Chapter 4 § 5	Receive quarterly reports from the State Department of Health during the 2011-12 interim regarding the status of any litigation and other administrative proceedings involving the United States Environmental Protection Agency (Budget Section)
Chapter 4 § 9	Receive the results of the performance audit of the Family Health Division of the State Department of Health during the 2011-13 biennium (Legislative Audit and Fiscal Review Committee)
Chapter 15 § 5	Receive quarterly reports from the Department of Corrections and Rehabilitation during the 2011-12 interim regarding the progress of the prison expansion project and any amounts and purposes of loans from the Bank of North Dakota to defray expenses of the project (Budget Section)
Chapter 24 § 2	Receive quarterly written reports from the Tobacco Prevention and Control Executive Committee during the 2011-12 interim, including detailed information on expenditures for contract services, professional fees and services, and grants (Budget Section)
Chapter 429 § 4	Receive periodic reports from the Office of Management and Budget during the 2011-12 interim on the status of implementation of the compensation system changes in accordance with identified compensation system initiatives (Budget Section)
Chapter 188 § 3	Receive report from the Health Council by July 1, 2012, regarding the findings of its review of current health care bed recommendations and whether changes should be made to better serve the population of North Dakota (Health Services Committee)
Chapter 126 § 1	Receive periodic reports from the Superintendent of Public Instruction regarding the Superintendent's study of Indian education issues and the development of criteria for grants to low-performing schools during the 2011-13 biennium (Education Funding and Taxation Committee)
Chapter 461 § 2	Receive report from the Tax Commissioner during the 2011-12 and 2013-14 interims regarding the number of in-state and out-of-state investors, amount of investment, and amount of tax credits accrued, claimed, and transferred by each individual angel fund (Taxation Committee)
Chapter 211 § 2	Receive regular updates from the Insurance Commissioner during the 2011-12 interim regarding administration and enforcement of the Patient Protection and Affordable Care Act, proposed legislation for consideration at a special legislative session, and proposed legislation by October 15, 2012, for the 2013 regular session (Health Care Reform Review Committee)
Chapter 225 § 3	Receive regular updates from the Insurance Commissioner and Department of Human Services during the 2011-12 interim on planning and implementing an American health benefit exchange for the state and proposed legislation for consideration at a special legislative session or proposed legislation by October 15, 2012, for the 2013 regular session (Health Care Reform Review Committee)
Chapter 218 § 6	Receive regular updates from the Insurance Commissioner during the 2011-12 interim with respect to steps taken to ensure health insurer procedures are in compliance with the Patient Protection and Affordable Care Act, proposed legislation for consideration at a special legislative session if the Commissioner is required by federal law to implement any requirement before January 1, 2013, and proposed legislation by October 15, 2012, for any requirement that must be implemented between January 1, 2013, and January 1, 2014 (Health Care Reform Review Committee)
Chapter 500 § 6	Consult with the State Water Commission in setting the priority within the commission's budget of a loan of $40 million from the resources trust fund at the request of the Western Area Water Supply Authority (Water-Related Topics Overview Committee)
Chapter 129 § 6	Receive a report from representatives of the Grand Forks, Minot, Grand Forks Air Force Base, and Minot Air Force Base School Districts before July 1, 2012, regarding the state's participation in the Compact on Educational Opportunity for Military Children (Education Funding and Taxation Committee)
Chapter 109 § 15	Receive report from the State Department of Health before January 1, 2012, April 1, 2012, and July 1, 2012, on the status and outcome of the

2011 Session Laws Citation	Subject Matter (Committee)
	department's creation of an inventory of material gathered relating to abortions and a report outlining the department's practices in gathering the items in the inventory (Health Services Committee)
Chapter 174 § 2	Receive a report from the Game and Fish Department by September 1, 2012, regarding the findings of its study of goose hunting in this state, tracking the number of resident and nonresident goose hunters and the number of geese taken by county (Natural Resources Committee)
Chapter 183 § 2	Receive a report from the Health Information Technology Advisory Committee by June 30, 2012, regarding the outline on how best to standardize drug prior authorization request transactions between providers and the payers, insurance companies, and pharmacy benefit managers (Human Services Committee)
Chapter 36 § 9	Receive report from the Insurance Commissioner at each meeting of the Budget Section during the 2011-12 interim regarding the status of provisions of the Patient Protection and Affordable Care Act (Budget Section)
Chapter 38 § 3	Receive report from the Department of Human Services after June 30, 2012, regarding any transfers of appropriation authority in excess of $50,000 between line items within subdivisions and between subdivisions for the 2011-13 biennium (Budget Section)
Chapter 38 § 6	Receive periodic reports from the Department of Human Services during the 2011-12 interim regarding the status of the dementia care services program (Human Services Committee)
Chapter 41 § 10	Receive periodic reports from the Office of Management and Budget during the 2011-12 interim on the status of implementation and administration of the compensation philosophy statement and compensation system initiatives included in House Bill No. 1031 (Employee Benefits Programs Committee)
Chapter 41 § 31	Approve, with the Emergency Commission, award and expenditure of tourism infrastructure grants for the 2011-13 biennium by the Department of Commerce under Senate Bill No. 2057 (Budget Section)
Chapter 46 § 4	Approve State Water Commission expenditure of funds in excess of $447,913,774 in the water and atmospheric resource line item of the commission's 2011-13 appropriation (Budget Section)

2011 Session Laws Citation	Subject Matter (Committee)
Chapter 353 § 1	Receive reports from the Department of Human Services and its steering committee beginning in June 2012 regarding the development of a new developmental disabilities reimbursement system (Human Services Committee)
Chapter 301 § 1	Receive annual report from the Department of Commerce compiling reports from cities that have a renaissance zone included in a tax increment financing district (Taxation Committee)
Chapter 147 § 39	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 to increase compensation paid to teachers would result in the school district having insufficient fiscal resources to meet the district's other obligations (Education Funding and Taxation Committee)
Chapter 147 § 42	Receive report from the Superintendent of Public Instruction before October 1, 2012, regarding data collected regarding the provision of services to students in grades 6 through 8 who are enrolled in an alternative education program (Education Funding and Taxation Committee)
Chapter 354 § 1	Receive report from the Department of Human Services before September 30, 2012, regarding the department's preliminary findings and recommendations concerning its regional autism spectrum disorder centers of early intervention and achievement pilot program, and receive written report from the department before December 31, 2012, summarizing the status of the pilot program and any findings and recommendations (Human Services Committee)
Chapter 53 § 1	Receive at least annual reports from the Upper Great Plains Transportation Institute during the 2011-12 interim regarding the status of reports for transportation infrastructure needs for all county and township roads in the state (Budget Section)
Chapter 355 § 2	Receive preliminary findings and any recommendation from the Department of Human Services before September 30, 2012, regarding the department's comprehensive review of the substance abuse services pilot voucher payment program (Human Services Committee)
Chapter 261 § 2	Receive report from the Department of Emergency Services regarding distribution of emergency snow removal

2011 Session Laws Citation	Subject Matter (Committee)
	grants before June 30, 2011 (Budget Section)
Chapter 261 § 4	Approve, with the Emergency Commission, use of funds appropriated to the Adjutant General for defraying expenses associated with presidential-declared state disasters and certain flood mitigation efforts (Budget Section)
Chapter 523	Hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress (Budget Section)

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 analyze state budget-related information	Government Services Committee
Study the feasibility and desirability of developing a state plan that provides North Dakota citizens with access to and coverage for health care which is affordable for all North Dakota citizens	Health Care Reform Review Committee
Study alternative funding methods for higher education	Higher Education Committee
Study higher education governance	Higher Education Committee
Study methods to improve higher education accountability	Higher Education Committee
Receive information from the North Dakota University System office and Dickinson State University staff regarding the internal review report of international transfer agreements at Dickinson State University	Higher Education Committee
Review the potential implications on the state of a recent opinion of the United States Department of Justice's opinion on Internet gambling which indicated that interstate transmissions of wire communications that do not relate to a sporting event or contest fall outside the reach of the federal Wire Act of 1961	Judiciary Committee
Review the recent announcement of the United States Department of Justice regarding a revised definition of rape within the Federal Bureau of Investigation's Uniform Crime Reporting program and determine whether state statutory changes are necessary in light of this revised definition	Judiciary Committee
Study ramifications of initiated measure to prohibit local imposition of property taxes	Property Tax Measure Review Committee
Study the feasibility and desirability of oil extraction tax rate reductions and elimination of selected exemptions which would take effect at certain levels of increased production and revenue	Taxation Committee
Study the federal government's management of Garrison Dam	Water-Related Topics Overview Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Management for study during the 2011-12 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
1003 § 22	Study programs offered by University System institutions that address the workforce needs of the state, including a review of the use of graduated tuition rates to increase enrollment in programs that address workforce needs
1007 § 4	Study all available options, including demolition, for the disposition of the old Veterans' Home facility
1007 § 5	Study the delivery of services to veterans, including the consistency in training and of the provision of services by county veterans' service officers
1152 § 2	Study and evaluate the positive and negative impacts of implementation of patient-centered medical homes in the state, including consideration of whether implementation is resulting in North Dakota residents experiencing health care savings and improved medical results as well as whether implementation is impacting North Dakota's critical access hospitals
1225 § 3	Study county and city emergency fund levies and expenditures and jurisdictional responsibilities and issues relating to emergency fund levies and expenditures

Bill or Resolution No.	Subject Matter
1375 § 1	Study the benefits offered in this and other states to National Guard members, including life insurance coverage
1386 § 1	Study whether steps can be taken to improve health care service providers' access to third-party payer reimbursement network systems in order to improve North Dakotans' access to health care services and to contain their health care costs and out-of-pocket expenses
2008 § 5	Study gas pipelines in the state focusing on safety concerns of gas utility distributions and transmission, including all pipeline activity and addressing the jurisdiction of pipelines in the state in consultation with the Public Service Commission, Industrial Commission, and North Dakota One Call
2057 § 31	Study the development of a reliable means of estimating the effect of future population growth on state and local government revenues
2057 § 32	Study the means by which training and assistance are provided to early childhood services providers and the efficiency of administering training and assistance to early childhood services providers, including whether there is duplication of efforts; review the effectiveness of funding provided to the Department of Human Services for early childhood care, including workforce development, child care capacity, and quality improvement for early childhood facilities, for the 2009-11 biennium and to the Department of Commerce for financing to early childhood facilities and early childhood facility grants for technical assistance, a business plan, or infrastructure for the 2009-11 biennium; and consider the effectiveness of funding provided to the Department of Human Services for child care service provider grants for the 2011-13 biennium
2079 § 2	Study the exploitation of the state's elderly and the state's vulnerable adult population, including a review of the vulnerable adult protection system and the use of Sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2 and any barriers to the use of those sections; a review of state and county services available to detect and respond to elderly abuse; and a statewide review of the role public administrators and guardians have in providing services to the elderly and to vulnerable adults
2150 § 41	Study the provision and funding of adult education
2279 § 5	Study the North Dakota veterans' preference laws
2298 § 4	Study the delivery of early childhood services and programs aimed at providing services to children, such as Head Start, temporary assistance for needy families, the early childhood comprehensive system program, and Department of Public Instruction-approved preschools and the funding sources for the recipients and providers of these services, including a review of the various agencies involved in providing grants and other funding for the recipients and providers of these services
2318 § 1	Study carbon dioxide storage easements and the duration of carbon dioxide storage easements
2342 § 3	Study the laws and rules relating to subsurface field tiling
2367 § 1	Study the physical, emotional, and financial effects associated with divorce involving dependent children, and offer legislative policy solutions, including divorce reform legislation and marriage and relational education, which will lead to increasing the number of dependent children living in intact families
3003	Study the impact of federal health care reform legislation on this state
3010	Study passenger rail service in the state, including options for implementing passenger rail service in the southern part of the state
3036	Study the trial by jury rights of a person charged with the commission of a misdemeanor, including the extent to which jury trials are conducted in the state for cases involving misdemeanor offenses; the costs of jury trials for misdemeanor offenses; the feasibility and desirability of eliminating the sentencing option of imprisonment for Class B misdemeanors; a review of the jury trial process of other states; and the feasibility and desirability of eliminating a jury trial right for civil traffic tickets
3037	Study the statutes throughout the North Dakota Century Code which grant immunity from civil or criminal liability for performing certain functions
3038	Study transportation funding options
3043	Study the filling of vacancies in the Legislative Assembly
3045	Study the feasibility and desirability of requiring private or public employers or both to use the federal E-Verify program for new hires
4010	Study the adequacy of governmental services, including judicial services, to respond to issues relating to an aging population, including veterans, and to study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services
4017	Study the feasibility and desirability of allowing school officials, including officials of higher education institutions, access to the otherwise confidential files and records of the juvenile court
4021	Study the feasibility and desirability of developing a strategic partnership between the state Tourism Division and corresponding tourism departments or alliances of tourism departments of the Indian tribes within North Dakota promoting tourism in North Dakota

Bill or Resolution No.	Subject Matter
4026	Study the extent to which North Dakota institutions of higher education are contracting with companies that specialize in managing refund operations, whether such companies are offering online financial and banking services to North Dakota students, and whether the students are being given full, complete, and readily comprehensible information regarding the array of services being offered, the fees being charged, and other options that are available for the control and management of their financial resources

2013 NORTH DAKOTA LEGISLATIVE MANAGEMENT BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1024 - Administrative Rule Newspaper Notice. This bill eliminates the statutory four-inch maximum column depth restriction for newspaper publication of notice of administrative rulemaking. (Administrative Rules Committee)

House Bill No. 1025 - Compensation for Commandeered Property - Disaster Response Liability - State Disaster Relief Fund. This bill removes the requirement that the destruction of property must be ordered by the Governor to allow a property owner to be eligible for compensation if property is commandeered or used in management of a disaster or emergency; expands the authorized uses of the state disaster relief fund to include the payment of any expenses incurred under North Dakota Century Code Chapter 37-17.1; limits immunity in disaster response activities to individuals, rather than providing immunity to the state and political subdivisions; and eliminates immunity for property owners permitting the use of real property for emergency management activities if the property owner has been grossly negligent. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1026 - Branding - Estrays - Livestock and Wool Dealers - Rewrite. This bill rewrites the laws pertaining to livestock branding, estrays, livestock dealers, and wool dealers. (Agriculture Committee)

House Bill No. 1027 - Driving Under Suspension - Temporary Restricted License. This bill provides additional flexibility to the Department of Transportation in providing temporary restricted licenses; expands the potential uses of a temporary restricted license to include use for attendance at an appropriate licensed addiction treatment program or a treatment program ordered by a court, or to use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender; and authorizes a court to dismiss a charge for driving under suspension if the defendant provides proof that the defendant has reinstated the operator's license within 60 days after the date of the offense. (Commission on Alternatives to Incarceration)

House Bill No. 1028 - Concussion Management Programs - Removal of Student - Authorization to Return. This bill maintains the required removal of students from practice, training, or competition, in the event a concussion is suspected and permits their return only upon the authorization of a licensed health care provider who is acting within the provider's scope of practice and trained in the evaluation and management of concussion. (Education Funding and Taxation Committee)

House Bill No. 1029 - Housing Incentive Fund. This bill increases the cap on the aggregate amount of tax credits for housing incentive fund contributions from $15 million to $20 million per biennium and caps the fund at $50 million. This bill also allows the Housing Finance Agency to enter private partnerships and reserve a share of the housing for the private partner's workforce and to charge administration fees to project developers, applicants, or grant recipients. (Energy Development and Transmission Committee)

House Bill No. 1030 - Fly Ash Use. This bill accepts the present use and disposal of coal combustion residues. (Energy Development and Transmission Committee)

House Bill No. 1031 - Bonds for Refineries. This bill allows the North Dakota Pipeline Authority to issue evidences of indebtedness for refineries. (Energy Development and Transmission Committee)

House Bill No. 1032 - Oil Extraction Tax Exemption. This bill provides an exemption from the oil extraction tax if the oil is sold to and refined by a refinery located in this state. (Energy Development and Transmission Committee)

House Bill No. 1033 - Central Management System for State-Owned Aircraft. This bill creates within the Department of Transportation a central management system for state-owned or state-leased aircraft. (Government Services Committee)

House Bill No. 1034 - Health Care Reform Study. This bill provides for a Legislative Management study of health care reform options. As part of this study, the Insurance Commissioner, Department of Human Services, and State Department of Health are to provide status reports on the state of health insurance and health-related public assistance. (Health Care Reform Review Committee)

House Bill No. 1035 - 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 nursing facility bed capacity from July 31, 2013, to July 31, 2015. (Health Services Committee)

House Bill No. 1036 - Health Care Data Committee - Duties. This bill changes the name and the duties of the Health Care Data Committee to the Health Data Committee. (Health Services Committee)

House Bill No. 1037 - Autism Spectrum Disorder Study. This bill provides for a continued Legislative Management study of the current system for the diagnosis of, early treatment of, care for, and education of individuals with autism spectrum disorder. (Human Services Committee)

House Bill No. 1038 - Autism Spectrum Disorder Registry and Educational Training. This bill provides an appropriation to the State Department of Health for establishing and administering an autism spectrum disorder registry and an appropriation to the Department

of Public Instruction for providing training and support for teachers and other school staff. (Human Services Committee)

House Bill No. 1039 - Autism Spectrum Disorder Voucher System. This bill provides an appropriation to the Department of Human Services for developing a voucher system for autism spectrum disorder services and support. (Human Services Committee)

House Bill No. 1040 - Guardianship Services Procedural Safeguards. This bill clarifies provisions relating to notices in guardianship proceedings and establishes provisions for emergency guardianship. (Human Services Committee)

House Bill No. 1041 - Guardianship and Public Administrator Services. This bill provides an appropriation to the Office of Management and Budget for providing grants to counties for guardianship and public administrator services and an appropriation to the Supreme Court for guardianship training. (Human Services Committee)

House Bill No. 1042 - Venue in Civil Cases. This bill provides if none of the defendants to an action reside in the state, the action either must be brought in the county in which the plaintiff or one of the plaintiffs resides or in the county in which the cause of action arose. (Judiciary Committee)

House Bill No. 1043 - Constitutional and Statutory Revision. This bill makes technical corrections throughout the North Dakota Century Code. (Judiciary Committee)

House Bill No. 1044 - Residential Property Tax Credit. This bill provides a residential property tax credit for an individual's primary residence by providing for state payment of property taxes on the first $75,000 of true and full valuation of the residence. For an individual 65 years of age or older, the credit is increased to cover taxes on the first $125,000 of true and full valuation of the residence. The credits provided are in addition to any homestead or disabled veterans credit. This bill also appropriates $384 million for allocation of residential property tax credit funds to counties for the 2013-15 biennium. (Taxation Committee)

House Bill No. 1045 - Equal Property Tax Relief for All Property. This bill provides property tax relief by appropriating $200 million for the 2013-15 biennium for allocation to counties to provide a 10 percent reduction in property taxes levied against all property by all taxing districts. (Taxation Committee)

House Bill No. 1046 - Withdrawal of Property Tax Exemption. This bill allows a city or county to reduce or revoke a previously granted property tax exemption for new or expanded business property if the city or county finds the property is not being used as intended when the exemption was granted. (Taxation Committee)

House Bill No. 1047 - Technical Corrections. This bill makes technical corrections to the International Registration Plan, the Unified Carrier Registration System, and the Single State Insurance Registration System. (Transportation Committee)

House Bill No. 1048 - Speeding Fees. This bill increases speeding fees. (Transportation Committee)

House Bill No. 1049 - Public Safety Answering Points. This bill delays the deadlines for public safety answering points by two years to the year 2015. The deadlines relate to staffing continuously by at least one public safety telecommunicator, transferring emergency calls to another public safety answering point within 60 minutes upon becoming inoperative, and having up-to-date mapping and longitude and latitude for direct responders. (Transportation Committee)

House Bill No. 1050 - At-Risk American Indian Student Grants. This bill appropriates $500,000 to the Superintendent of Public Instruction for a pilot grant program for at-risk American Indian students and for the support of community-based services. (Tribal and State Relations Committee)

House Bill No. 1051 - Designated Medical Provider Program Study. This bill provides for a Workers' Compensation Review Committee study of Workforce Safety and Insurance's designated medical provider program. The bill provides that during the 2013-14 interim, the committee is charged with studying Workforce Safety and Insurance's designated medical provider program; however, the committee may comply with the study charge by including the study as one of the elements of the Workforce Safety and Insurance independent performance evaluation conducted under Section 65-03-30. (Workers' Compensation Review Committee)

House Bill No. 1052 - Workers' Compensation Designated Medical Provider Program. This bill strengthens an employer's duty to inform employees of the employer's decision to participate in the designated medical provider program. (Workers' Compensation Review Committee)

House Bill No. 1053 - Workers' Compensation Medical Provider Transparency. This bill makes more transparent a medical provider's professional relationship with Workforce Safety and Insurance by providing that if Workforce Safety and Insurance enters a professional relationship with a medical provider, one of the terms of that relationship is that at the time of treatment of a patient who is an injured employee, the medical provider has an obligation to inform that patient that the medical provider has a professional relationship with Workforce Safety and Insurance. (Workers' Compensation Review Committee)

House Concurrent Resolution No. 3001 - Group Housing Study. This resolution provides for a Legislative Management study of issues related to development of group housing and crew camps, including infrastructure demands, health and safety requirements, regulation, and enforcement of regulatory violations. (Advisory Commission on Intergovernmental Relations)

BILLS RECOMMENDED TO 62ND LEGISLATIVE ASSEMBLY SPECIAL SESSION

House Bill No. 1473 (2011) - Legislative Redistricting Plan. This bill provided for a legislative redistricting plan that established 47 legislative districts, required the Secretary of State to modify 2012 primary

election deadlines and procedures if necessary, and provided an effective date of December 1, 2011. This bill was enacted by the Legislative Assembly at its November 2011 special session. (Legislative Redistricting Committee)

House Bill No. 1474 (2011) - Health Benefit Exchange. This bill provided for a state-administered health benefit exchange. This bill failed to pass the House of Representatives during the November 2011 special session. (Health Care Reform Review Committee)

House Bill No. 1475 (2011) - Affordable Care Act Appropriations. This bill provided appropriations to the Department of Human Services for Affordable Care Act-related costs of the Department of Human Services and the Information Technology Department and to the Insurance Commissioner for the purpose of defraying the expenses of implementation of the Affordable Care Act. This bill was enacted during the November 2011 special session. (Health Care Reform Review Committee)

House Bill No. 1476 (2011) - Health Insurance External Review Procedure. This bill amended the law relating to the external review procedures required for health insurance policies. The portions addressed by the amendments include clarification of the circumstances under which an external review must be available, expedited external review requirements, notice requirements, allowable filing fees for requesting an external review, and the method by which the Insurance Commissioner shall assign an independent review organization. This bill was enacted during the November 2011 special session. (Health Care Reform Review Committee)

SENATE

Senate Bill No. 2025 - Extraordinary Road Use Fees. This bill provides that extraordinary road use fees for a violation that did not occur on an interstate or a state highway must be deposited in the general fund of the jurisdiction having authority over the road on which the violation occurred and must be used for the support of the road system of that jurisdiction. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2026 - Seed Potato Certification - Seed Potato Control Areas - Rewrite. This bill rewrites the laws pertaining to seed potato certification and seed potato control areas. (Agriculture Committee)

Senate Bill No. 2027 - Renewable Energy Research. This bill takes 5 percent, up to $3 million per biennium, of the amount credited to the resources trust fund and places it in the renewable energy development fund. This bill also provides for a general fund appropriation of $300,000 for a study for value-added market opportunities for renewable energy resources. (Energy Development and Transmission Committee)

Senate Bill No. 2028 - Employment Statistics Update. This bill provides a general fund appropriation of $100,000 to Job Service North Dakota for the purposes of upgrading the collection and use of employment data to identify transportation employees and other employees who should be included in oil-related and gas-related employment. (Energy Development and Transmission Committee)

Senate Bill No. 2029 - Oil and Gas Research. This bill provides an additional $6 million per biennium to the oil and gas research fund with intent that $5 million be used by the Industrial Commission for opportunities related to value-added processing of oil and gas. This bill also provides a general fund appropriation of $300,000 for a study of value-added market opportunities related to oil and gas. (Energy Development and Transmission Committee)

Senate Bill No. 2030 - Regional Public Health Network Program. This bill continues the regional public health program, removes the requirement that participating local public health units share administrative functions, provides that any joint powers agreement include core activities, and includes outcome measures. This bill also provides a general fund appropriation to the State Department of Health to establish, administer, and operate regional public health networks. (Health Services Committee)

Senate Bill No. 2031 - Tribal Public Health Unit. This bill defines tribal health units and allows a public health unit to form on an Indian reservation. This bill also provides an appropriation to the State Department of Health for implementing a tribal public health unit pilot project and requires reports to the Legislative Management. (Health Services Committee)

Senate Bill No. 2032 - Higher Education Accountability Measures. This bill requires the North Dakota University System performance and accountability report to include certain accountability measures. (Higher Education Committee)

Senate Bill No. 2033 - Large Information Technology Project Definition. This bill changes 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. (Information Technology Committee)

Senate Bill No. 2034 - Executive Steering Committee for Information Technology Projects. This bill requires an executive branch agency proposing a major information technology project to collaborate on the procurement, contract negotiation, and contract administration with the Information Technology Department, Office of Management and Budget, and the Attorney General and creates an executive steering committee for overseeing the project. (Information Technology Committee)

Senate Bill No. 2035 - Extended Jurisdiction Juvenile Proceeding. This bill provides the option of an extended juvenile jurisdiction proceeding for certain offenses. This bill also provides upon the motion of any party, including a child's parent or guardian, the court may consider the proceeding an extended jurisdiction juvenile proceeding. This bill also provides the assignment of a judicial officer to conduct an extended jurisdiction juvenile proceeding must be decided in accordance with rules adopted by the Supreme Court. (Judiciary Committee)

Senate Bill No. 2036 - Mill Levy Reduction Grants. This bill provides property tax relief by appropriating $403 million for the 2013-15 biennium for allocations to school districts to reduce school district property taxes. This bill also provides for a school district levy reduction of up to 75 mills based on 2008 mill rates, restriction on school district property tax levies, and state revenue replacement to school districts. (Taxation Committee)

Senate Bill No. 2037 - Mill Levy Reduction Grants. This bill provides property tax relief by appropriating $403 million for the 2013-15 biennium for allocations to school districts to reduce school district property taxes. The only significant difference from previous mill levy reduction grant legislation is this bill allows school districts that were levying fewer than 185 mills in 2008 to increase levies by a portion of the mills by which the district was under 185 mills and to obtain state matching funds for one-half of the increased number of mills. (Taxation Committee)

Senate Bill No. 2038 - Mobile Home Tax Year. This bill synchronizes taxable years for mobile homes and real property. This bill also provides delinquent mobile home taxes would be enforced under the provisions of law that apply to real property. This bill also requires the application for a moving permit for a mobile home to be moved outside the state to show that taxes have been paid. (Taxation Committee)

Senate Bill No. 2039 - Operator's License Laws. This bill improves the consistency and clarity of Chapter 39-06 on operator's licenses and provides for fee consolidation. (Transportation Committee)

Senate Bill No. 2040 - Commercial Driver's License Fees. This bill consolidates the fees for commercial driver's licenses. (Transportation Committee)

Senate Bill No. 2041 - License Plate Destruction. This bill provides for the destruction of license plates for driving while under the influence and driving under suspension or revocation instead of impoundment. (Transportation Committee)

Senate Bill No. 2042 - No Title for Marked Title. This bill prohibits the Department of Transportation from issuing a certificate of title or transferring a certificate of title to an out-of-state vehicle with a marked title. (Transportation Committee)

Senate Bill No. 2043 - Class III Off-highway Vehicles. This bill defines a Class III off-highway vehicle to include Argos and SnoBears and to prevent SnoBears from being registered as snowmobiles or operating on snowmobile trails. (Transportation Committee)

Senate Bill No. 2044 - Traffic Offense Laws. This bill provides consistency and clarity in Chapter 39-06.1, which relates to the disposition of traffic offenses, fees, and points for traffic offenses. (Transportation Committee)

Senate Bill No. 2045 - Commercial Driver Training Schools. This bill transfers the regulation of commercial driver training schools from the Highway Patrol to the Department of Transportation. (Transportation Committee)

Senate Bill No. 2046 - Commercial Driver's License Updates. This bill makes commercial driver's license laws consistent with federal regulations. (Transportation Committee)

Senate Bill No. 2047 - Committee on Tribal and State Relations Extension. This bill extends the Committee on Tribal and State Relations through July 31, 2015. (Tribal and State Relations Committee)

Senate Bill No. 2048 - Resources Trust Fund Allocations. This bill requires the State Water Commission to develop policies governing allocation of funds from the resources trust fund. (Water-Related Topics Overview Committee)

Senate Bill No. 2049 - Water Topics Overview Committee - Garrison Diversion Conservancy District Irrigation Special Assessments Legislation Extension. This bill renames the Water Topics Overview Committee and makes it a permanent statutory committee, clarifies several irrigation law provisions, and extends the expiration date of Garrison Diversion Conservancy District irrigation special assessments legislation for two years. (Water-Related Topics Overview Committee)

Senate Bill No. 2050 - Workers' Compensation Permanent Partial Impairment Determinations. This bill provides if a permanent partial impairment determination is contested, the determination of the independent doctor is presumed if it is not more than and not less than the determinations of the injured employee's and Workforce Safety and Insurance's medical providers; however, if the independent doctor's determination is more than the injured employee's medical provider's determination, the presumed whole body impairment is the determination of the injured employee's medical provider, and if the independent doctor's determination is less than Workforce Safety and Insurance's medical provider's determination, the presumed whole body impairment is the determination of Workforce Safety and Insurance's medical provider. (Workers' Compensation Review Committee)

Senate Concurrent Resolution No. 4001 - Federal Block Grant Hearings. This 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 63rd Legislative Assembly through September 30, 2015. (Budget Section)

Senate Concurrent Resolution No. 4002 - Community Paramedic Study. This resolution provides for a Legislative Management study of the potential for community paramedics to provide additional clinical and public health services particularly in rural areas of the state, including the ability to receive reimbursement for these services and the effect these reimbursements would have on the sustainability of emergency medical services providers. (Health Services Committee)