REPORT

OF THE

NORTH DAKOTA LEGISLATIVE MANAGEMENT

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

SIXTY-FOURTH LEGISLATIVE ASSEMBLY
2015

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January 6, 2015

Honorable Jack Dalrymple
Governor of North Dakota

Members, 64th Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Management's report and recommendations of 21 interim committees, the Advisory Commission on Intergovernmental Relations, and the Commission on Alternatives to Incarceration.

Major recommendations include changing the terms of supervision and probation for felony offenses, changing mandatory sentencing laws, providing sales tax exemptions for pipeline sales and fertilizer facilities, increasing the funding for the abandoned oil and gas well plugging and site reclamation fund, providing legacy fund definitions and use of earnings, changing the main state employee retirement plan, funding master plans for Bismarck state agencies and the State Hospital and James River Correctional Center, providing an income tax deduction for military retirement pay, providing insurance coverage for telemedicine and substance abuse, providing a tuition freeze at two-year colleges, increasing the maximum student financial assistance grant awards and the academic and career and technical education scholarships, establishing a traumatic brain injury registry, requiring higher education to use a systemwide email and to retain emails for five years, changing the driving under the influence laws, requiring enhanced training for assessors, requiring improved notice and information to be provided to property tax payers, requiring tax levy requests of unelected governing bodies to be subject to adjustment by a city or county, extending the state-paid property tax relief credit for two more years, providing for regular evaluation of state-provided economic development incentives, and prohibiting the use of the resources trust fund for funding the State Water Commission.

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,

Senator Ray Holmberg
Chairman
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RH/JJB

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

HISTORY OF THE LEGISLATIVE COUNCIL

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

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

NAME CHANGES

The name of the LRC was changed to the Legislative Council in 1969 to more accurately reflect the scope of its duties. Since 2009, Legislative Council refers specifically to the staff functioning as the legislative service agency, while Legislative Management refers to the oversight committee of legislators. Although research is still an integral part of the functioning of the Legislative Council, it has become a comprehensive nonpartisan 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 Legislative 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 interim 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 consulting firms, universities, or outside professionals on specialized studies and projects. However, the vast majority of studies are handled entirely by the Legislative 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 Legislative 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 Legislative Council supervises the publication of the Session Laws, the North Dakota Century Code, and the North Dakota Administrative Code. The Legislative 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 Legislative Council has on its staff the Legislative Budget Analyst and Auditor and a fiscal staff 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 Legislative Council provides information technology services to the legislative branch, including legislative publishing and bill drafting capabilities. The Legislative 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 Legislative 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 LEGISLATIVE 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 agriculture laws, 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 LEGEND, an updated legislative enterprise system that replaced the mainframe system. 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 is 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

It is the standing duty of the Legislative Management to review administrative rules adopted by administrative agencies. The Legislative Management reviewed all state administrative rulemaking actions from January 2013 through October 2014, covering 2,116 pages of rules and 1,383 rules sections. Although there were substantially fewer sections reviewed, the rules comprised substantially more pages than during the previous biennial period. The Legislative Management did not void any rules submitted by administrative agencies from January 2013 through October 2014.

The Legislative Management reviewed rules amendments adopted by the Office of Management and Budget, Agriculture Commissioner, Attorney General, Department of Financial Institutions, Game and Fish Department, State Department of Health, Department of Transportation, Highway Patrol, Industrial Commission, Insurance Commissioner, Public Service Commission, North Dakota Racing Commission, Public Employees Retirement System, Department of Human Services, Tax Commissioner, State Water Commission, Workforce Safety and Insurance, and Information Technology Department as well as numerous boards and commissions.

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 discuss issues relating to local government structure; fiscal and other powers and functions of local governments; relationships between and among local governments and the state or any other government; allocations of state and local resources; interstate issues involving local governments, including cooperation with the appropriate authorities of other states; and statutory changes required to implement commission recommendations.

The Legislative Management studied the feasibility and desirability of making political subdivision budget information accessible on the state budget database website and finding better ways to inform taxpayers regarding political subdivision budget or levy deliberations and regarding legislative property tax relief. The Legislative Management recommends Senate Bill No. 2054 to provide a requirement for all assessors to be certified and to impose the same training requirements for all certified assessors, Senate Bill No. 2024 to provide a township that unilaterally transferred its zoning authority to the county may enter a mutual agreement with that county to regain the zoning authority, Senate Concurrent Resolution No. 4001 for a Legislative Management study to examine the necessity of the financial reports provided by political subdivisions, Senate Bill No. 2055 to provide electric transmission reports, and House Bill No. 1059 to provide a continuation of the 2013 state-paid credit of 12 percent of property taxes levied by a taxing district.

The Legislative Management studied whether political subdivisions can become more efficient and effective to reduce costs to taxpayers.

The Legislative Management recommends Senate Concurrent Resolution No. 4002 for a Legislative Management study to examine the various references to political subdivisions currently in law.

AGRICULTURE

The Legislative Management studied North Dakota Century Code provisions that relate to agriculture, for the purposes of eliminating those provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order. The Legislative Management recommends House Bill No. 1026 to rewrite the laws pertaining to ginseng and Senate Bill No. 2025 to rewrite the laws pertaining to apiaries.

The Legislative Management studied the North Dakota Milk Marketing Board and recommends House Bill No. 1027 to rewrite the laws pertaining to the North Dakota Milk Marketing Board.

The Legislative Management studied the State Board of Registration for Professional Soil Classifiers and recommends Senate Bill No. 2026 to rewrite the laws pertaining to the State Board of Registration for Professional Soil Classifiers.

The Legislative Management recommends House Bill No. 1028 to continue the study of Century Code sections that pertain to agriculture.

The Legislative Management received a report from the State Board of Agricultural Research and Education, regarding its annual evaluation of research activities and expenditures and a report from representatives of agricultural production groups, regarding the effects of 2013 Senate Bill No. 2211 on various sectors of the agricultural industry.

BUDGET SECTION

The Legislative Management received reports from the Office of Management and Budget on the status of the general fund, employee bonuses, irregularities in the fiscal practices of the state, the capital improvements preliminary planning revolving fund, tobacco settlement proceeds, 2013-15 biennium budget form changes, federal grant applications, information technology study, Missouri River Correctional Center land use study, and State Board of Higher Education capital projects variance reports.

The Legislative Management approved a change to the method of reporting legislative changes relating to the development of the state budget during legislative sessions.

The Legislative Management authorized the expenditure of additional other funds for capital projects, as well as changes in the scope of capital projects at Dakota College at Bottineau, North Dakota State College of Science, North Dakota State University, University of North Dakota, Valley City State University, and Williston State College. The Legislative Management received reports from the North Dakota University System regarding local funds, the capital projects contingency pool, the University System's master plan, an information technology data breach, a phishing email attack, consolidation of University System information technology services, and periodic reports from North Dakota State University regarding the status of the Minard Hall project, Dickinson State University regarding the Theodore Roosevelt Presidential Library project, Minot State University regarding campus security improvements, and the University of North Dakota School of Medicine and Health Sciences regarding a walkway project and naming opportunities for potential donors.

The Legislative Management received reports from the State Board of Agricultural Research and Education on the status of board activities, the North Dakota Agricultural Experiment Station, and the North Dakota State University Extension Service budget.

The Legislative Management received reports from the Department of Commerce on the Centers of Excellence and Centers of Research Excellence audit and monitoring reports, renaissance fund organizations annual audits, long-term care grants, and the experimental program to stimulate competitive research and research North Dakota.

The Legislative Management received the Information Technology Department's 2012-13 and 2013-14 annual reports and the desktop support study results.

The Legislative Management received reports from the Department of Human Services on transfers in excess of $50,000, the status of the Medicaid management information system, and grants to critical access hospitals.

The Legislative Management received reports from the Housing Finance Agency regarding flood-impacted housing assistance and housing units owned or master leased for essential service workers.

The Legislative Management received reports from the State Water Commission regarding changes to the project priorities list presented to the 63rd Legislative Assembly, the commission's cost-share policy changes, and Fargo flood control funding and expenditures. The Legislative Management also received reports regarding Fargo flood control from the F-M Area Flood Diversion Board of Authority regarding an update on congressional authorization of the diversion project and on the status of the self-insured crop insurance pool; mitigation efforts, alternatives, and costs; easements; and the project budget, and from the MNDAK Upstream Coalition regarding the impacts of the Fargo flood control project and mitigation efforts, alternatives, and costs.

The Legislative Management approved a request from the Department of Transportation to spend in excess of $4 million for replacement airplanes, and Legislative Management approved the new license plate design. The Legislative Management also received a report from the Upper Great Plains Transportation Institute regarding county, township, and tribal roads and bridges infrastructure needs.

The Legislative Management approved three land acquisition requests from the Game and Fish Department, the expansion of capital improvement projects for the Lewis and Clark State Park campsite, the Fort Stevenson State Park administrative office, the Lake Sakakawea State Park campground, and to increase special funds spending authority for those projects of the Parks and Recreation Department, and approved 24 agency requests for increased spending authority, transfers of spending authority, expenditures from the state contingencies appropriation, or increased full-time equivalent (FTE) positions which were forwarded from the Emergency Commission.

The Legislative Management received reports from the Department of Trust Lands regarding state agency unclaimed property, Job Service North Dakota regarding the status of the job insurance trust fund, the Legacy and Budget Stabilization Fund Advisory Board's activities, the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than 3 years, semiannual reports from the Secretary of State regarding credit card usage and fees, the State Historical Society regarding its project pool, the Attorney General's office regarding law enforcement grants, the Department of Veterans' Affairs regarding veterans exposed to Agent Orange, the Department of Corrections and Rehabilitation regarding its inmate report, hub city reports regarding the use of funding received from allocations from oil and gas gross production tax, the Industrial Commission regarding the abandoned oil and gas well plugging and site reclamation fund, the North Dakota Outdoor Heritage Advisory Board's activities to date, the State Fire Marshal regarding expenditures by certified fire departments, district funds received from the insurance tax distribution fund, and reserve fund balances, and other reports, including a report from the Three Affiliated Tribes of the Fort Berthold Reservation regarding investment of oil and gas tax receipts.

The Legislative Management recommends House Concurrent Resolution No. 3001 to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds during the 2015-16 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 also studied sentencing alternatives to incarceration for first time offenses that are nonviolent, excluding the distribution of drugs.

The Legislative Management recommends Senate Bill No. 2027 to reduce the length of probation for most felony offenses, except sex offenses and violent crimes, from 5 years to 3 years; reduce the length of probation for misdemeanor offenses from 2 years to 360 days; provide the maximum length of probation extension for violating the conditions of probation is 360 days; allow a court to authorize the Department of Corrections and Rehabilitation to terminate supervision after 18 months if the offender has complied with the conditions of probation; and allow up to 5 nonsuccessive periods of incarceration within a 12-month period, which may not exceed 48 hours, as an alternative to a revocation of probation. The Legislative Management recommends House Concurrent Resolution No. 3002 to provide for a Legislative Management study of restitution for criminal acts. The Legislative Management recommends Senate Bill No. 2028 to eliminate the mandatory transfer of a juvenile to adult court for offenses related to manufacture, delivery, or possession of controlled substances. The Legislative Management recommends House Bill No. 1029 to separate the offenses of abuse of a child and neglect of a child into different statutory provisions and eliminate the Class B felony penalty for the offense of neglect of a child. The Legislative Management recommends Senate Bill No. 2029 to remove the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty to or been found guilty of a felony violation for drug possession, and to provide a judge discretion with respect to the length of the probation within those statutory limits. The Legislative Management recommends Senate Bill No. 2030 to reduce the penalty for possession of paraphernalia intended for the use of a controlled substance from a Class C felony to a Class A misdemeanor and reduce the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor. The Legislative Management recommends House Bill No. 1030 to allow a court to depart from a mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.

The Legislative Management also recommends the Governor include additional funding in the executive budget for the 2015-17 biennium to provide residential treatment program beds statewide, with an emphasis on additional beds in the western portion of the state; the Governor include in the executive budget funding to replicate the Cass County Jail diversion project in other areas of the state; and the Governor include funding in the executive budget for a study of evidence-based practices used by the Department of Corrections and Rehabilitation, the Department of Human Services, and other agencies which are intended to reduce incarceration and recidivism.

The Legislative Management expresses its support for funding of appropriate treatment services to support the Department of Human Services and the Department of Corrections and Rehabilitation in meeting identified treatment service gaps, expresses its support for increased funding of community service supervision grants, encourages the judicial branch to examine implementing a pilot program similar to the Hawaii's Opportunity Probation with Enforcement (HOPE) program, and recommends the Governor contact The Pew Charitable Trusts to propose a collaborative effort to implement a justice reform study in the state.

ECONOMIC IMPACT

The Legislative Management studied the long-term costs of transportation infrastructure maintenance and improvement projects and methods for funding these projects. The Legislative Management agreed with the findings and recommendations in the report of the Upper Great Plains Transportation Institute and requested the Governor to consider the report's recommendations for funding in the budget for the Department of Transportation for the 2015-17 biennium.

The Legislative Management studied child care services, including consideration of the current and potential needs for child care services and the current and potential workforce needs related to child care, and the current quality of child care services.

The Legislative Management accepted a report from the Department of Commerce regarding the status of the program to establish and administer an unmanned aircraft systems test site; a report from the Emergency Services Communications Coordinating Committee regarding the use of the assessed communications services fee revenue; a report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2015; and a report from the North Dakota Economic Development Foundation regarding progress made toward recommendations provided as part of the 2020 and Beyond Initiative. The Legislative Management also received a report of the Housing Finance Agency inventory regarding government programs providing residential and commercial development assistance.

EDUCATION FUNDING

The Legislative Management studied state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education in this state. The Legislative Management recommends Senate Bill No. 2031 to establish per student funding levels of $9,482 and $9,766 for the 2015-17 biennium, provide money for school construction and districts having high numbers of English language learners, and through a recalibration of weighting factors, provide additional money for professional development, at-risk students, English language learners, alternative schools, and regional education associations.

The Legislative Management received reports regarding the financial condition of schools, school district employee compensation, the status of the statewide longitudinal data system plan, requests for and waivers of accreditation rules, requests for and waivers of statutory requirements governing instructional time for high school courses, student scores on recent statewide tests of reading and mathematics, and the development, delivery, and administration of comprehensive early childhood care and early childhood education in this state.

EMPLOYEE BENEFITS PROGRAMS

The Legislative Management exercised its statutory authority and solicited and reviewed multiple proposals affecting retirement and health programs for public employees, 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.

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. The Legislative Management recommends Senate Bill No. 2032 to create an oil and gas development strategic planning authority to develop a comprehensive strategic plan to address oil and gas-affected communities' needs, with a focus on infrastructure needs. The Legislative Management recommends Senate Bill No. 2033 to provide supplemental funding to political subdivisions when oil and gas tax revenues exceed legislative forecast by providing an automatic trigger mechanism with an appropriation of $200 million from the strategic investment and improvements fund if in the first six months of the biennium revenues exceed the forecast by 20 percent. The Legislative Management recommends Senate Bill No. 2034 to create a sales and use tax exemption for materials used for oil gathering pipelines. The Legislative Management recommends Senate Bill No. 2035 to create a sales and use tax exemption for tangible personal property used for a fertilizer or chemical processing facility. The bill is retroactive to include all of 2015. The Legislative Management recommends Senate Bill No. 2036 to provide for an exemption from the coal conversion facilities privilege tax for beneficiated coal used within a coal conversion facility and to remove the sunset on the sales and use tax exemptions for beneficiated coal and the severance tax exemption for coal used in certain plants. The Legislative Management recommends Senate Bill No. 2037 to increase the property tax valuation on wind generation units commenced before January 1, 2015, and completed before January 1, 2017, from 1.5 to 3 percent, to provide a grace period for the income tax credit

relating to those wind towers, to remove the sunset on the sales tax exemption for wind, and to remove the $5 million cap on the sales and use tax exemption for new coal mines located in this state.

The Legislative Management studied the establishment of an energy corridor, including the easements required to make United States Highway 85 a four-lane highway corridor. The Legislative Management recommends House Bill No. 1031 to transfer $75 million per biennium from the oil and gas production tax to the state highway fund for major improvements and construction of highway corridors impacted by energy development with a priority for four lanes for United States Highway 85.

The Legislative Management studied the permitting, regulation, siting of oilfield waste landfills, and the disposal of waste related to oil and gas development. The Legislative Management recommends House Bill No. 1032 to raise the deposit in the abandoned oil and gas well plugging and site reclamation fund from an amount not exceeding $5 million to an amount not exceeding $10 million per year and raise the cap for the fund from $75 million to $100 million.

GOVERNMENT FINANCE

The Legislative Management studied methods to assure that the legacy fund provides the lasting benefits intended by the voters in enacting the constitutional measure. The Legislative Management recommends House Bill No. 1033 to provide several definitions for constitutional provisions relating to the legacy fund and to clarify the process used to determine limitations on expenditures from the legacy fund. The bill also provides that earnings transferred from the legacy fund to the general fund at the end of a biennium are to be transferred back to the legacy fund and become principal unless certain criteria are met.

The Legislative Management studied the feasibility and desirability of existing and possible state retirement plans, including an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The Legislative Management recommends Senate Bill No. 2038 to provide for changes to the main state employee retirement plan to require eligible employees hired for the first time after December 31, 2015, to enroll in the defined contribution plan under Chapter 54-52.6, rather than the defined benefit plan. State employees currently in the defined benefit plan and those hired before January 1, 2016, who elect to participate in the defined benefit plan will continue to participate in the defined benefit plan. However, during the last six months of 2016, a state employee participating in the defined benefit plan may make an irrevocable election to transfer to the defined contribution plan. The bill also changes the vesting period for employees participating in the defined contribution plan to allow for participants to fully vest in employer contributions after one year of service instead of four.

The Legislative Management studied the foundation aid stabilization fund, including anticipated growth in the fund, appropriate funding levels, options for the disposition of excess funding if appropriate funding levels are exceeded, the reallocation of oil extraction taxes currently being deposited in the fund, and the feasibility and desirability of proposing changes to the constitution relating to the foundation aid stabilization fund. The Legislative Management recommends:

- House Bill No. 1034 to clarify the use of the foundation aid stabilization fund and budget stabilization fund for state school aid payments in the event of a general fund revenue shortfall.
- Senate Concurrent Resolution No. 4003 to amend Article X, Section 24, of the Constitution of North Dakota to permit the Legislative Assembly to appropriate or transfer any principal balance in the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium, for the purpose of making low-interest loans for school construction projects, addressing existing or anticipated unfunded benefit obligations of state retirement funds, or other education-related purposes.
- Senate Bill No. 2039 to establish a school construction assistance loan fund and a public employee retirement stabilization fund and provide for a contingent transfer of $250 million into the school construction assistance loan fund and a contingent transfer of $200 million into the public employee retirement stabilization fund.

The Legislative Management studied the process of appropriating funds for salaries and wages and the state's classification system, including the feasibility and desirability of appropriating a lump sum amount to each agency for salaries and wages without identifying specific purposes for the funding and allowing the agency head the flexibility to use the funding as necessary to accomplish the duties and responsibilities of the agency, and the effect of this change on the state's classification and benefits system and on the process of reporting by the agency on its use of the funds to the Legislative Assembly.

The Legislative Management studied the feasibility and desirability of establishing a maximum state contribution to the cost of state employee health insurance premiums. The Legislative Management recommends House Concurrent Resolution No. 3003 to continue the study of state employee health insurance premiums, including a review of the

feasibility and desirability of the state health plan retaining its grandfathered status under the federal Affordable Care Act.

The Legislative Management reviewed the State Board of Higher Education's activities relating to any agreement or financing associated with the purchase of the Research Enterprise and Commercialization building from the University of North Dakota Research Foundation on the campus of University of North Dakota.

The Legislative Management reviewed state budget information, including monitoring the status of revenues and appropriations, reviewing the 2013-15 revised and preliminary 2015-17 biennium revenue forecasts, and receiving updates on potential major budget issues for the 2015-17 biennium.

GOVERNMENT SERVICES

The Legislative Management studied facility needs of state agencies in the Bismarck area. The Legislative Management recommends Senate Bill No. 2040 to provide an appropriation to the Office of Management and Budget to develop a master plan for all state agencies with a physical location in the Bismarck area.

The Legislative Management studied the use of structures and property of the James River Correctional Center and the State Hospital. The Legislative Management recommends Senate Bill No. 2041 to provide an appropriation to the Department of Human Services to develop a master plan in conjunction with the Department of Corrections and Rehabilitation for the State Hospital and the James River Correctional Center.

The Legislative Management studied current state and federal benefits available to North Dakota veterans. The Legislative Management recommends Senate Bill No. 2042 to provide a state income tax deduction for military retirement pay.

The Legislative Management received reports on the Committee on Employment of People with Disabilities, the Department of Corrections and Rehabilitation's plan to move the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center, the projected costs to write, publish, and distribute a record of all North Dakota veterans, and the service dog training program.

HEALTH CARE REFORM REVIEW

Through three studies, the Legislative Management studied the immediate needs and challenges of the North Dakota health care delivery system, implementation of the Healthy North Dakota initiative, Medicaid reform, and feasibility of developing a plan for a private health care model that will comply with federal health care reform; studied health care reform options, including the implementation of the federal Affordable Care Act (ACA) if the federal law remains in effect and state alternatives for state-based health care reform if the federal law is repealed; and studied the effects of the ACA due to the dramatically changing health care system in the state, including alternatives to the ACA and the Medicaid Expansion provisions to make health care more accessible and affordable to the citizens of the state.

The Legislative Management recommends House Bill No. 1035 to provide for the Legislative Management to continue its ongoing study of the needs and challenges of the North Dakota health care delivery system. The study may include monitoring the implementation of ACA, examining Medicaid Expansion and Medicaid reform, and considering the feasibility of developing a state-based plan for a health care model that will comply with federal health care reform.

The Legislative Management recommends House Bill No. 1036 to direct the State Department of Health during the 2015-16 interim to evaluate state programs to assist health professionals, including behavioral health professionals, with a focus on state loan repayment programs for health professionals and make periodic reports to the Legislative Management on the outcome of the study, including presentation of recommended legislation.

The Legislative Management recommends House Bill No. 1037 to direct the Department of Human Services during the 2015-16 interim to study options for implementing income-based cost-sharing provisions for the Medicaid and Medicaid Expansion programs and report to the Legislative Management the outcome of the study and the associated legislative recommendations and related draft legislation.

The Legislative Management recommends House Bill No. 1038 to provide Public Employees Retirement System (PERS) uniform group insurance must provide medical benefits coverage under a policy that provides coverage for health care services provided by a health care provider or health care facility by means of telemedicine which are the same as the policy coverage of in-person health care services provided by a health care provider or health care facility. The mandate is limited to the PERS system, the mandate expires in two years, the bill directs PERS to study the

impact of the bill during that two-year period, and the bill directs PERS to introduce to the 65th Legislative Assembly a bill to extend the mandate of coverage to the private health insurance market.

The Legislative Management recommends House Bill No. 1039 to amend the group health policy mandate for substance abuse coverage. The bill would apply the substance abuse coverage requirements to all health insurance policies, would remove the coverage requirement formulas for different types of substance abuse services, and clarifies that required coverage must include inpatient treatment, treatment by partial hospitalization, residential treatment, and outpatient treatment.

The Legislative Management recommends House Bill No. 1040 to provide for revision of the involuntary commitment proceeding law to update the language and to expand the statutory authority of advanced practice registered nurses to authorize advanced practice registered nurses to act as independent expert examiners in involuntary commitment proceedings.

The Legislative Management recommends House Bill No. 1041 to amend the Medicaid Expansion law to provide if the Department of Human Services implements the Medicaid Expansion program through a contract with a private carrier, the department shall issue one request for proposal for the health insurance component of Medicaid Expansion and shall issue one request for proposal for the pharmacy benefit management component of the Medicaid Expansion or shall provide the pharmacy benefit management services through the Department of Human Services. The bill provides if the pharmacy benefit management component is not provided through the Department of Human Services, the contract between the department and the pharmacy benefit manager must include specified provisions that address passthrough pricing, transparency, and audit provisions.

HEALTH SERVICES

The Legislative Management studied how to improve access to dental services and ways to address dental service provider shortages, including the feasibility of utilizing mid-level providers, whether the use of incentives for dental service providers to locate in underserved areas in the state may improve access, and whether the state's medical assistance reimbursement rates impact access to dental services. The study included a review of state dental care programs, dental service provider programs, the dental health workforce, access to dental services, and various proposals to improve access to dental services. The Legislative Management recommends Senate Concurrent Resolution No. 4004 directing the Legislative Management to continue to study dental services in the state, including the effectiveness of case management services and the state infrastructure necessary to cost effectively use mid-level providers to improve access to services and address dental service provider shortages in underserved areas of the state.

The Legislative Management studied the comprehensive statewide tobacco prevention and control plan used in this state. As part of the study, the Legislative Management received a single assessment of programs administered by the Tobacco Prevention and Control Executive Committee and the State Department of Health, including funding sources for the programs, service providers, areas and populations served by the programs, effectiveness of the programs on improving the health and policy environment in the state, and how the comprehensive statewide tobacco prevention and control programs provided by the two agencies address the Native American population on the Indian reservations. The Legislative Management makes no recommendation as a result of its study of the comprehensive statewide tobacco prevention and control plan used in this state.

The Legislative Management studied the feasibility and desirability of community paramedics providing additional clinical and public health services, particularly in rural areas of the state, including the ability to receive third-party reimbursement for the cost of these services and the effect of these services on the operations and sustainability of the current emergency medical services system. As part of the study, the Legislative Management received updates regarding a community paramedic pilot project, including information regarding training, licensing, supervision, services, and reimbursement. The Legislative Management recommends Senate Bill No. 2043 to require the Department of Human Services adopt rules entitling licensed community paramedics to payment for health-related services provided to recipients of medical assistance, subject to limitations and exclusions the department determines necessary consistent with how limitations are set for other medical assistance services.

The Legislative Management studied the funding provided by the state for autopsies and state and county responsibilities for the cost of autopsies, including the feasibility and desirability of counties sharing in the cost of autopsies performed by the State Department of Health and the School of Medicine and Health Sciences. The study included a review of the current system of death investigation in the state, county autopsy costs, various medicolegal death investigation system funding models, and recommendations for improvements to the medicolegal death investigation system in the state. The Legislative Management recommends House Concurrent Resolution No. 3004 directing the Legislative Management to continue to study medicolegal death investigation in the state and how current best practices, including authorization, reporting, training, certification, and the use of information technology and

toxicology, can improve death investigation systems in the state. In addition, the Legislative Management recommends House Bill No. 1042 to provide appropriations to the State Department of Health for information technology costs related to the electronic review of death records and for the reimbursement of travel costs related to county coroner training and the planning of future coroner services in the state.

The Legislative Management received a report from the Insurance Commissioner regarding cost-benefit analyses for bills mandating health insurance coverage during the prior legislative sessions. The Legislative Management accepted the Insurance Commissioner's recommendation to continue to contract with Milliman and Associates to conduct cost-benefit analyses during the 2015 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 any findings and recommendations for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes;
- Department of Human Services, State Department of Health, Indian Affairs Commission, and PERS regarding goals and strategies to reduce diabetes in the state, including individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes;
- University System regarding a study the out-of-state programs in veterinary medicine, optometry, and dentistry, including information regarding the accessibility of North Dakota students to the programs; the provision of state funding for students attending the programs; the amount of debt incurred by students attending the programs; and the state's short-term and long-term needs for dentists, optometrists, and veterinarians;
- Legislative Council regarding a survey of agency alcohol, drug, tobacco, and risk-associated behavior prevention and treatment program expenditures during the 2011-13 biennium and funding budgeted for the 2013-15 biennium.

HIGHER EDUCATION FUNDING

The Legislative Management studied issues affecting higher education, including funding methods, intellectual property policies and procedures, student affordability, and the use of open textbooks. The Legislative Management recommends:

- The 64th Legislative Assembly exclude 2013-15 biennium appropriations for extraordinary flood and energy development impact needs from the higher education funding formula and to provide a separate funding allocation to campuses for extraordinary needs.
- The 64th Legislative Assembly provide funding to institutions to allow for 24/7 security coverage at campuses.
- House Bill No. 1043 to prohibit tuition increases at University System two-year institutions during the 2015-17 biennium and to provide a general fund appropriation of $2.5 million to offset the fiscal impact of the tuition freeze.
- House Bill No. 1044 to increase the maximum student financial assistance grant award to $2,000 and to provide a general fund appropriation of $30,690,000 which is estimated to be sufficient to provide grants to 8,000 full-time and part-time students. The bill draft also increases the amount of the academic and career and technical education scholarships for new recipients to $1,000 per semester with a lifetime maximum of $8,000. The bill provides a general fund appropriation of $17,426,748 for existing program recipients at the current scholarship award amount and new scholarship recipients at the increased scholarship award amount.

The Legislative Management received reports from the University of North Dakota School of Medicine and Health Sciences regarding the strategic plans, programs, and facilities of the School of Medicine; 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; from the State Board of Higher Education regarding the board's progress in implementing and administering Chapter 15-18.1 regarding authorization to operate postsecondary institutions; from the State Board of Higher Education regarding distribution from the higher education performance funding pool; from the State Board of Higher Education regarding higher education challenge grants distribution; and from the State Board of Higher Education regarding North Dakota academic and career and technical education scholarships. The Legislative Management recommends House Bill No. 1045 to require private postsecondary institutions to notify the State Board of Higher Education or Board of Career and Technical Education of any changes to the institution's accreditation status. The bill also requires private postsecondary institutions to notify current or potential students if a program or course complies with the certification requirements of the appropriate professional board in the state.

HUMAN SERVICES

The Legislative Management studied a comprehensive system of care for individuals with brain injury. The Legislative Management recommends:

- House Bill No. 1046 to provide appropriations to the State Department of Health for a traumatic brain injury registry and to the Department of Human Services for traumatic brain injury registry marketing and training, traumatic brain injury regional resource facilitation, and to expand brain injury services, including return to work programming.
- Senate Bill No. 2044 to provide an appropriation to the Department of Human Services for a traumatic brain injury flex fund program.
- House Bill No. 1047 to exempt providers of prevocational services licensed or certified by the Department of Human Services from registering with the Labor Commissioner.
- House Concurrent Resolution No. 3005 to provide for the Legislative Management to continue the study of a comprehensive system of care for individuals with brain injury during the 2015-16 interim.

The Legislative Management studied behavioral health needs of youth and adults in North Dakota. The Legislative Management recommends:

- Senate Bill No. 2045 to provide an appropriation to the Department of Human Services for a voucher system for addiction treatment services.
- Senate Bill No. 2046 to provide medical assistance coverage for behavioral health services provided by licensed marriage and family therapists and licensed professional clinical counselors, to direct the Department of Human Services to develop an outcomes-based data system for behavioral health services, to provide an appropriation to the Department of Human Services for adult and youth substance abuse treatment services, to provide an appropriation to the Highway Patrol for mental health first aid training for state and local law enforcement personnel, and to provide for a Legislative Management study of the structure and services of the Department of Human Services during the 2015-16 interim.
- House Bill No. 1048 to establish an oversight system and reciprocity language for behavioral health licensing boards.
- Senate Bill No. 2047 to expand the definition of qualified mental health professional as it relates to residential treatment centers for children.
- Senate Bill No. 2048 to provide appropriations to the Department of Human Services for an adult and youth mental health assessment network and a pilot project to develop planning protocols for discharge or release of individuals with behavioral health issues, to provide an appropriation to the Department of Public Instruction to provide mental health first aid training for teachers and child care providers, and to provide for Legislative Management studies of mental health screening and assessment programs for children and of behavioral health needs of youth and adults.
- House Bill No. 1049 to provide appropriations to the State Board of Higher Education, the Bank of North Dakota, and the Department of Human Services for forgivable loans and grants relating to certain behavioral health professionals.
- Senate Bill No. 2049 to include licensed marriage and family therapists in the definitions of mental health professional and mental health personnel, as they relate to commitment procedures and judicial remedies.
- Senate Concurrent Resolution No. 4005 to provide for a Legislative Management study of judicial issues related to behavioral health, including 24-hour hold, termination of parental rights, and court committals, during the 2015-16 interim.

The Legislative Management studied home and community-based services. The Legislative Management recommends:

- Senate Bill No. 2050 to prohibit the Department of Human Services from requiring an individual to apply for services under the state's medical assistance program as a condition of being eligible to apply for services under the service payments for elderly and disabled program.
- House Bill No. 1050 to provide an appropriation to the Department of Human Services to assist communities to establish organizations to provide volunteer-based services for elderly and disabled persons.

The Legislative Management received reports on the autism spectrum disorder plan, the autism spectrum disorder voucher program pilot project, the children's health insurance program state plan, the grant to implement a certificate

program that prepares individuals with autism spectrum disorder for employment in the technology sector, and the impact of changing the eligibility requirements and reducing copay requirements for the child care assistance program.

INFORMATION TECHNOLOGY

The Legislative Management received reports from the Chief Information Officer and representatives of the Information Technology Department regarding the department's annual report; major information technology projects; prioritization of major computer software projects for the 2015-17 biennium; and health information technology activities and from representatives of the University System regarding higher education information technology major projects and security attacks. The Legislative Management studied Voice over Internet Protocol (VoIP) service and issues related to the development of the current radio communication plan and received the results of a desktop support study, information technology hardware relocation and consolidation study, and an information technology staffing analysis of the Department of Public Instruction.

The Legislative Management recommends:

- House Bill No. 1051 requiring all institutions under the control of the State Board of Higher Education to use systemwide email and to retain all emails for five years and clarifying that the State Board of Higher Education and the institutions under the control of the State Board of Higher Education are included in the state's records retention policies.
- House Bill No. 1052 requiring the Chief Information Officer of the University System rather than the commissioner of the State Board of Higher Education to coordinate with the Information Technology Department and to report to the Information Technology Committee.
- House Bill No. 1053 requiring certain state agencies to obtain centralized desktop support services from the Information Technology Department and requiring the department to make available five major desktop support services for all state agencies, which include procurement services, information technology hardware inventory management services, a standardized system to track user issues, antivirus software, and mobile device management services.
- Senate Bill No. 2051 exempting the information technology hardware operated by the Attorney General's office from consolidation and relocation and removing the ability of the Office of Management and Budget to grant exemptions from the required use of hosting services and other information technology-related services resulting in the relocation and consolidation of the information technology hardware operated by the Department of Mineral Resources, Public Service Commission, and State Water Commission.

JUDICIARY

The Legislative Management studied the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute. The Legislative Management makes no recommendation as a result of this study.

The Legislative Management reviewed changes to the state's driving under the influence (DUI) laws under 2013 House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders. The Legislative Management recommends Senate Bill No. 2052, which makes several changes to the use of the 24/7 sobriety program for adult and juvenile DUI offenders; limits the look-back period to 15 years for fourth and subsequent DUI offenses; provides, for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal are deemed to be a single violation; provides a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information; requires the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test; and provides for the suspension of a portion of a mandatory sentence if the defendant successfully completes a drug court program approved by the Supreme Court.

The Legislative Management studied the intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011. The Legislative Management makes no recommendation as a result of this study.

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

The Legislative Management recommends Senate Bill No. 2053 which makes technical corrections throughout the Century Code.

The Legislative Management reviewed executive orders issued by the President of the United States which had not been affirmed by a vote of the Congress and signed into law, to determine whether to recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. The Legislative Management makes no recommendations for further review by the Attorney General and the Governor of any executive order issued between May 2013 and August 2014.

The Legislative Management received the following six reports:

1. 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.
2. 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.
3. A biennial report from the Racing Commission regarding the operation of the commission.
4. A report from the Director of the North Dakota Lottery regarding the operation of the lottery.
5. 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.
6. A report on the status of gender balance on appointive boards, commissions, committees, and councils and within the Governor's appointive cabinet for the 2013-15 biennium. North Dakota has 145 boards, commissions, committees, and councils to which the Governor makes appointments.

LEGISLATIVE AUDIT AND FISCAL REVIEW

The Legislative Management received and accepted 158 audit reports prepared by the State Auditor's office and public accounting firms. Among the audit reports accepted were two performance audits and evaluations from the 2013 regular legislative session--University System office staffing and water use monitoring and reporting policies and procedures of the Water Appropriations Division of the office of the State Engineer; and two performance audits and evaluations from the 2013-14 interim--water use permitting process of the Water Appropriations Division of the office of the State Engineer and the Game and Fish Department's private land open to sportsman (PLOTS) program and the department's compliance with laws, rules, and policies related to human resource and the use of resources.

The Legislative Management received information regarding three information technology audits--North Dakota network and security, judicial branch Odyssey Case Management information system, and ConnectND Human Capital Management information system.

The Legislative Management received information regarding the Department of Human Services' accounts receivable writeoffs, University System improvements to financial reporting, Bank of North Dakota financial reporting standards, State Auditor's office peer review, electronic viewing of audit reports, water permitting process in North Dakota and Texas, Tobacco Prevention and Control Executive Committee Measure No. 3 funding compliance report, and the Department of Financial Institution's examination of the Bank of North Dakota.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Legislative Management approved arrangements for the 2015 legislative session. The Legislative Management approved various legislative space renovations, including relocating the Legislative Council library to the Senate committee clerk area; remodeling of the existing library space into six offices; audio, visual, and technology upgrades to the Senate and House conference rooms; and upgrades of Senate and House audio systems.

The Legislative Management adopted policies relating to legislative promotion expenses, legislator data plan reimbursement, and legislator use of personal computers.

The Legislative Management recommends amendment of legislative rules to remove the requirement for leave of the House to appoint a member to preside during an absence of the Speaker for a longer time than one day; clarify that the limits on debate do not apply to the leaders and the chairman, nor to a spokesman designated by the chairman; to provide that action that results in final disposition of a resolution must be taken by voice vote, except as provided under Senate and House Rules 340 or when requested under Senate and House Rules 320 or 343; to restrict the six sponsor limit to Senate bills or resolutions; to require Senate bills containing an appropriation clause to be

introduced before the 11th legislative day; and to require every bill and resolution referred to committee to be scheduled for a hearing and a hearing to be held.

TAXATION

The Legislative Management studied the property tax system and reviewed rules relating to supervision and training of assessment officials. The Legislative Management recommends Senate Bill No. 2054 to replace existing assessor classifications with a single status of certified assessor. The bill requires all assessors to be certified and requires 180 hours of training for certified assessors. The training requirements in the bill represent an increase in the amount of training required for township assessors and assessors of cities under a 5,000 person population. The deadline for assessors to receive certification under the new training requirements is 2017 to allow time for assessors to complete additional training. The Legislative Management recommends House Bill No. 1054 to restrict use of modifiers in agricultural property assessments to those contained in a single schedule of modifiers adopted by the State Supervisor of Assessments. The bill provides that the single schedule of modifiers would be provided to all assessors as well as a copy of guidelines regarding how modifiers must be applied and instructions on how to use available soil survey resources. The bill requires a site inspection be conducted to confirm the existence of any conditions warranting a modification prior to an approved modifier being applied to reduce the soil type valuation of an area. The Legislative Management recommends Senate Bill No. 2055 to provide reporting requirements for electric transmission, distribution, and generation companies. The bill requires electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. The bill requires the reports be filed at the same time transmission and distribution company reports are required to be filed. The reporting requirements take effect in 2016.

The Legislative Management studied applying property tax rates against true and full value of property. The Legislative Management recommends House Bill No. 1055 to eliminate the use of mills in calculating property taxes. The bill converts the numerous references within the Century Code regarding use of a number of mills for property tax determinations into use of a number of cents per $1,000 of true and full value. The conversion would be effective starting January 2016.

The Legislative Management studied controlling the growth of property tax levies, including an assessment of the effectiveness of state-funded property tax relief and received reports on county use of allocations of oil and gas gross production tax revenues and employment data used in determining oil and gas revenue allocations. The Legislative Management recommends Senate Bill No. 2056 to provide for uniform language in provisions pertaining to levies requested by unelected governing bodies. The bill clarifies that levies requested by unelected governing bodies are subject to adjustment by the approving entity. The bill also provides authority for boards of county commissioners and city governing bodies to request financial information from unelected governing bodies requesting approval of property tax levies. The Legislative Management recommends House Bill No. 1056 to require rural fire districts to receive a majority vote by mail ballot election before increasing its levy authority. The Legislative Management recommends House Bill No. 1057 to provide for notice to property owners if the assessment on the owner's property increased by 10 percent and $3,000 from the assessment in the prior year. The notice requirements in the bill apply to city, township, and county boards of equalization and provide that the entity making the increase is the entity that must notify the owner. The bill also requires a local board of equalization to provide reasonable advance notice to a property owner and opportunity for that property owner to appear if the board is considering increasing the assessment on the property by 15 percent or more over the prior year's assessment. The Legislative Management recommends House Bill No. 1058 to provide for notice of the time and place for public budget hearings to each owner of property in a political subdivision if the political subdivision is considering a property tax levy increase in a greater number of mills than a zero increase number of mills. The bill also allows for consolidated notices to be sent to property owners owning more than one parcel of property in the taxing district. The bill eliminates the previous requirement for newspaper publication of budget hearings. The Legislative Management recommends House Bill No. 1059 to extend the 12 percent state-paid property tax credit. The bill appropriates $230 million for allocation of state-paid property credit funds for the 2015-17 biennium.

The Legislative Management studied state economic development tax exemptions, including the desirability of utilizing a regular review process to assess the effectiveness of those exemptions and received reports on the activities of each angel fund in the state and a cost-benefit analysis during the 2013-14 interim of certain coal severance tax exemptions. The Legislative Management recommends House Bill No. 1060 to provide for the sharing of confidential information with the Department of Commerce by Job Service North Dakota and the Tax Department for purposes of providing information to the Department of Commerce for evaluating tax incentives. The bill provides for safeguards in restricting the use and disclosure of that information by the Department of Commerce. The Legislative Management recommends Senate Bill No. 2057 to provide for regular review and evaluation of state economic development tax incentives. The bill provides for review of each of the selected incentives every six years by an interim committee designated by the Legislative Management. The bill also provides for specific factors to be taken

into consideration when reviewing incentives and for committee authority to recommend legislation regarding incentives.

The Legislative Management studied the effectiveness of local property tax exemptions and other economic development incentives and received reports on state grantor and business tax incentives, renaissance zone progress, and cities in which a renaissance zone is included in a tax increment financing district. The Legislative Management also studied the forest stewardship tax. The Legislative Management makes no recommendations as a result of these studies.

TRIBAL AND STATE RELATIONS

The Legislative Management conducted joint meetings with the Native American Tribal Governments' Task Force. The Legislative Management studied taxation; education; tribal youth issues; Indian education issues; tribal health and human services issues; central indexing and tribal voting identification; tribal housing and roads; water issues; tourism; and tribal business development. The Legislative Management also received updates on Supreme Court committees that address tribal and state court issues; the tribal college grant program; and the Board of University and School Lands study of land surrounding Lake Sakakawea and Lake Oahe.

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 received a report from the State Department of Health on the status of the tribal public health unit project.

The Legislative Management recommends House Concurrent Resolution No. 3006 to study the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts.

WATER TOPICS OVERVIEW

The Legislative Management studied the Red River Valley Water Supply Project, the State Water Commission cost-share policy and prioritization guidance concept, the development and financing of municipal water projects, the Western Area Water Supply Authority, and other water-related topics. The Legislative Management recommends Senate Bill No. 2058 to prohibit the principal and income from the resources trust fund being available to the State Water Commission, or any employees or appointees of the State Water Commission, for wages, salaries, and operating expenses unless otherwise provided by law. The Legislative Management recommends House Bill No. 1061 to remove areas that already had been studied from the statutory duties of the Water Topics Overview Committee and to provide that the committee may meet and work collaboratively with the State Water Commission.

WORKERS' COMPENSATION REVIEW

The Legislative Management exercised its statutory authority and reviewed the workers' compensation case of one injured employee to determine whether changes should be made to the state's workers' compensation laws. The committee may select up to four of the elements to be included in the quadrennial performance evaluation of Workforce Safety and Insurance (WSI) and to receive the performance evaluation report and review any actions taken resulting from the performance evaluation report. Under the directive of 2011 House Bill No. 1051 the committee studied the WSI preferred provider program by including the topic as one of the four elements selected to be included in the WSI performance evaluation.

The Legislative Management received from WSI a biennial report regarding compiled data relating to safety grants, an annual report on pilot programs to assess alternative methods of providing rehabilitation services, and a report 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 Senate Bill No. 2059 to provide that for workers' compensation wage loss benefits, to establish that an employer made a job offer to an injured employee, the proof of offer of employment must be established by an employer's written offer to the employee by registered mail.

The Legislative Management recommends Senate Bill No. 2060 to establish protocols that must be followed as a prerequisite for WSI to cover chronic opioid therapy for injured employees. To qualify for coverage, the chronic opioid therapy must be appropriate and meet specified requirements; the status of the injured employee must meet specified requirements, such as have a diagnosis consistent with chronic pain; and the prescriber of the chronic opioid therapy shall meet specified requirements, such as complying with documentation requirements and entering treatment agreements with the injured employee.

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.

Committee members were Representatives Bill Devlin (Chairman), Randy Boehning, Joshua A. Boschee, Robert Frantsvog, Brenda Heller, Ben Koppelman, Kim Koppelman, Mark S. Owens, Mike Schatz, Peter F. Silbernagel, Blair Thoreson, Nathan Toman, and Robin Weisz; and Senators John Andrist, Kelly M. Armstrong, Joan Heckaman, Jerry Klein, and Connie Triplett.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th 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.

CURRENT RULEMAKING STATISTICS

The committee reviewed 1,383 rules sections and 2,116 pages of rules that were changed from January 2011 through October 2012. Although there were substantially more sections reviewed, the rules comprised substantially fewer 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
January 2013-October 2014	1,383

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

Time Period	Supplement Pages
January 2007-October 2008	1,663
January 2009-October 2010	2,011
January 2011-October 2012	2,399
January 2013-October 2014	2,116

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 Registration for Professional Engineers and Land Surveyors 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.

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 Education Standards and Practices Board, relating to a requirement for a second major for certain special education majors. The committee will reconsider the rules at its meeting in December 2014.

Rules Voided by Committee

The committee did not void any rules submitted by administrative agencies from January 2013 through October 2014.

TABLE A

Statistical Summary of Rulemaking
January 2013 Through October 2014 - Supplements 347 Through 354

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
4	347 - JAN 13	Office of Management and Budget	1	0	0	0	0	0	1
	353 - JUL 14		18	2	0	6	0	0	26
4.5	353 - JUL 14	Board of Addiction Counseling Examiners	12	0	0	0	0	0	12
7	348 - APR 13	Agriculture Commissioner	9	3	0	5	0	0	17
	354 - OCT 14		1	4	0	0	0	0	5
8	351 - JAN 14	Board of Architecture and Landscape Architecture	24	2	0	7	0	0	33
10	347 - JAN 13	Attorney General	3	0	0	0	0	0	3
	348 - APR 13		4	0	0	0	0	0	4
	351 - JAN 14		23	1	0	0	0	0	24
13	347 - JAN 13	Department of Financial Institutions	25	2	0	1	0	0	28
	348 - APR 13		16	6	0	2	0	0	24
17	352 - APR 14	State Board of Chiropractic Examiners	1	0	0	0	0	0	1
24	353 - JUL 14		18	0	0	0	0	0	18
28	354 - OCT 14	State Board of Registration for Professional Engineers and Land Surveyors	5	0	0	0	0	0	5
30	347 - JAN 13	Game and Fish Department	14	3	0	2	0	0	19
	351 - JAN 14		10	0	0	0	0	0	10
33	347 - JAN 13	State Department of Health	21	1	0	0	0	0	22
	351 - JAN 14		11	10	0	6	0	0	27
	352 - APR 14		15	0	0	0	0	0	15
37	352 - APR 14	Department of Transportation	3	1	0	0	0	0	4
38	349 - JUL 13	Highway Patrol	9	3	0	0	0	0	12
43	348 - APR 13	Industrial Commission	17	20	0	1	0	0	38
	349 - JUL 13		34	107	0	7	0	0	148
	352 - APR 14		36	5	0	0	0	0	41
45	351 - JAN 14	Insurance Commissioner	13	1	0	0	0	0	14
	352 - APR 14		12	17	0	1	0	0	30
50	349 - JUL 13	State Board of Medical Examiners	3	0	0	0	0	0	3
54	349 - JUL 13	State Electrical Board	1	0	0	0	0	0	1
	352 - APR 14	Board of Nursing	84	16	0	16	0	0	116
55.5	352 - APR 14	Board of Occupational Therapy Practice	8	4	0	1	0	0	13
60	347 - JAN 13	Pesticide Control Board	14	2	0	3	0	0	19
61	348 - APR 13	State Board of Pharmacy	1	0	0	0	0	0	1
	354 - OCT 14		12	2	0	0	0	0	14
62	351 - JAN 14	State Plumbing Board	1	0	0	0	0	0	1
63	348 - APR 13	Board of Podiatric Medicine	8	0	0	0	0	0	8
67.1	349 - JUL 13	Education Standards and Practices Board	4	0	0	0	0	0	4
	349 - JUL 13		4	0	0	0	0	0	4
	354 - OCT 14		13	1	0	0	0	0	14
69	348 - APR 13	Public Service Commission	25	9	0	1	0	0	35
	350 - OCT 13		0	0	0	2	0	0	2
	354 - OCT 14		1	0	0	0	0	0	1
69.5	350 - OCT 13	Racing Commission	2	0	0	0	0	0	2
	353 - JUL 14		1	0	0	0	0	0	1
71	351 - JAN 14	Public Employees Retirement System	0	0	0	5	0	0	5
	352 - APR 14		16	1	0	0	0	0	17
75	347 - JAN 13	Department of Human Services	55	0	0	1	0	0	56
	351 - JAN 14		25	0	0	1	0	0	26
	352 - APR 14		72	20	0	0	0	0	92
	353 - JUL 14		76	16	0	1	0	0	93
	354 - OCT 14		8	3	0	0	0	0	11
81	352 - APR 14	Tax Commissioner	1	5	0	0	0	0	6
87	351 - JAN 14	Board of Veterinary Medical Examiners	6	0	0	0	0	0	6
89	353 - JUL 14	State Water Commission	96	3	0	8	0	0	107
92	352 - APR 14	Workforce Safety and Insurance	14	0	0	0	0	0	14
93	350 - OCT 13	Private Investigative and Security Board	3	0	0	0	0	0	3
96	348 - APR 13	Board of Clinical Laboratory Practice	1	0	0	0	0	0	1
97	353 - JUL 14	Board of Counselor Examiners	10	3	0	2	0	0	15
109	352 - APR 14	Peace Officer Standards and Training	40	3	0	6	0	0	49
112	348 - APR 13	Board of Integrated Health Care	0	54	0	0	0	0	54
113	351 - JAN 14	Information Technology Department	0	8	0	0	0	0	8
Total			960	338	0	85	0	0	1383

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 completing 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 of local government issues and to accept suggestions from groups or individuals for study.

In conjunction with Section 54-35.2-02(4), Section 54-40.2-03 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 serve as a resource for other political subdivisions in exploring cooperative arrangements.

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 Parks Association Board of Directors 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 Legislative Management assigned to the commission the study directed in 2013 House Bill No. 1132, which provides for a study of the feasibility and desirability of making political subdivision budget information accessible on the state budget database website and finding better ways to inform taxpayers regarding political subdivision budget or levy deliberations and regarding legislative property tax relief. In addition, the Legislative Management assigned to the commission the study provided by Senate Concurrent Resolution No. 4023, which provides for a study of whether political subdivisions can become more efficient and effective to reduce costs to taxpayers.

The commission members were Representatives Brenda Heller (Chairman) and Ron Guggisberg; Senators Dwight Cook and Jessica K. Unruh; North Dakota League of Cities representatives Katie Andersen and Don Frye, who served until he did not seek reelection, and Chris West who was appointed to replace Mr. Frye; North Dakota Association of Counties representatives Vicki Kubat and Scott Ouradnik; North Dakota Township Officers Association representative Kenneth Yantes, who served until Larry Syverson was appointed to replace Mr. Yantes; North Dakota Recreation and Parks Association representative Mike Schwartz; North Dakota School Boards Association representative Dr. Jon Martinson; and Governor's designee Brandi Pelham.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

POLITICAL SUBDIVISION BUDGET INFORMATION AND PROPERTY TAX RELIEF

Section 1 of 2013 House Bill No. 1132 directed a study of making political subdivisions budget information accessible on the state budget database website and finding better ways to inform taxpayers regarding political subdivision budget or levy deliberations and better ways to inform taxpayers regarding property tax relief. House Bill No. 1132 as introduced would have required enhanced information to be provided in property tax statements. The amendment to House Bill No. 1132, directing the study, incorporates consideration of an issue raised by 2013 House Bill No. 1256, which, as introduced, would have required political subdivisions to submit budget information for inclusion on the state budget database website.

State Budget Database Website Use

The objective of 2013 House Bill No. 1256 was to expand the searchable state budget database. The proposed expansion would have included annual budget information on the state website so that citizens could access the budget of a city, county, or any other political subdivision to understand how their tax dollars were being spent. House Bill No. 1256 failed to pass. Late in the 2013 legislative session, an amendment was added to House Bill No. 1015, which, as enacted, created a new subsection to Section 54-44.1-18 providing as follows:

> The governing body of each political subdivision may submit the annual budget adopted by the governing body to the director of the budget. The director of the budget shall include on the office of management and budget website any information submitted by a participating governing body of a political subdivision. The official who submits the annual budget to the director of the budget may not submit any information that is confidential under state or federal law. In lieu of submitting the annual budget adopted by the governing body to the director, any participating governing body may provide to the director a publicly accessible internet link on which the annual budget adopted by the participating governing body is available.

Informing Taxpayers of Budget and Levy Meetings and Property Tax Relief

Senate Bill No. 2036 was amended late in the 2013 legislative session to incorporate property tax reform issues that had been discussed in connection with several other bills during the session. The common objective of much of the legislative session discussion was providing taxpayers access to more understandable information on how property taxes are determined and to encourage discourse between political subdivision governing bodies and taxpayers in the budget and levy public hearings process. The property tax reform amendments added to Senate Bill No. 2036 related primarily to assessment increase notices, property tax levy notices, and information contained in real estate tax statements.

Section 57-12-09 provides if an assessor increases true and full valuation of any parcel by $3,000 or more and 10 percent or more of the last assessment, written notice of the amount of increase must be sent to the property owner. Senate Bill No. 2036 added two new subsections providing:

2. The form of notice prescribed by the tax commissioner must require a statement to inform the taxpayer that an assessment increase does not mean property taxes on the parcel will increase. The notice must state that each taxing district must base its tax rate on the number of dollars raised from property taxes in the previous taxable year by the taxing district and that notice of public hearing will be mailed to the property owner if a greater property tax levy is being proposed by the taxing district. The notice may not contain an estimate of a tax increase resulting from the assessment increase.
3. The assessor shall provide an electronic or printed list including the name and address of the addressee of each assessment increase notice required under this section to each city, county, school district, or city park district in which the subject property is located, but a copy does not have to be provided to any such taxing district that levied a property tax levy of less than one hundred thousand dollars for the prior year.

Section 57-15-02.1 provides a taxing district may not impose a property tax levy in a greater number of mills than the zero increase number of mills without publishing newspaper notice of the intended tax increase. Senate Bill No. 2036 added a requirement that at least seven days before a public hearing on a property tax levy for more than a zero increase number of mills, the governing body must provide mailed notice to each property owner in the taxing district who received notice of an assessment increase for the taxable year under Section 57-12-09. The bill also provided an adjustment for taxable year 2013 for determining the zero increase number of mills for a school district, to reflect the property tax relief provided to reduce mill levies of school districts.

Section 57-20-07.1 was amended by Senate Bill No. 2036 to require the real estate tax statement sent by the county treasurer to provide information identifying the property tax savings provided by the state and to include a line item entitled "legislative tax relief" to identify the dollar amount of property tax savings realized by the taxpayer from property tax relief provided by the Legislative Assembly under Chapter 15.1-27 and Section 57-20-07.2. The amendment also created a provision that the form of the real estate tax statement to be used in every county must be prescribed and approved for use by the Tax Commissioner.

Testimony and Discussion

State Website Database

The commission was informed that 30 counties have provided the Office of Management and Budget some form of their budget that now appears on the state website. Space is provided for other political subdivision budgets, but counties have been the only political subdivision to provide the information. The commission was informed that although information is provided, it is very diverse in format and usability. The information is not searchable and each budget does not contain the same information or the same format. The commission received information that traffic to

the website has not yet been tracked by the Office of Management and Budget, although some counties have tracked website hits and thus far traffic has been very low. The commission was informed that not all counties filed budgets on the state website because financial responsibilities have increased and some counties are overwhelmed with duties.

Property Tax Assessors

The commission received information from a representative of the Tax Department that there are 1,340 organized townships in the state and counties perform assessing duties for 508 of the townships and that townships perform their own assessment duties for the other 832 townships with 511 assessors. Of the 356 incorporated cities, counties perform the assessing duties for 147 cities and cities perform their own assessments for 209 cities with approximately 140 assessors.

The commission reviewed a bill draft under consideration by the interim Taxation Committee to require all assessors to be certified and to impose uniform training requirements for all certified assessors. The bill draft would require 180 hours of instruction in assessment issues to obtain certification as an assessor, which would be a substantial increase in the amount of training required for township assessors and assessors of cities under 5,000 population.

The commission received testimony from supporters of the bill draft that increased standards were necessary to ensure fair and uniform assessing across the state and were informed that current assessor training requirements differ depending on the four levels of certification. Current training for township assessors and Class II requires 24 hours of instruction. A Class I city assessor must complete 150 hours of instruction, and a county tax director must complete 180 hours of instruction.

Proponents of the bill draft said improving the assessment system is essential to improving fairness of the property tax. They said the best improvement to the assessment system would come from better training for assessors. Comments on the bill draft expressed concern over the ability to find assessors willing to obtain the new certification and the costs for political subdivisions associated with increased assessor training.

Tax Statements

The commission was informed that county tax statements are prepared in differing formats by different counties, which results in confusion among taxpayers receiving statements from more than one county. Some counties show the 2011 legislative property tax credit when comparing taxes from one year to the next, while other counties do not. The commission was informed that a working group assembled by the Tax Department staff and including auditors from across the state developed a standardized tax statement during this interim to be used by all counties for the 2015 tax statements. The statements are not uniform in appearance because of the different software vendors used by counties, but the standardized statements will include the same basic information across all counties.

Township Zoning

The Township Officers Association requested consideration of a simplified means for a township to reacquire zoning authority that was previously transferred to the county. A 1982 constitutional amendment provided that a political subdivision may, by mutual agreement, transfer to the county any of its powers and may, in like manner, revoke the transfer. The opinion concluded that a township that unilaterally transferred its zoning authority to the county between 1955 and 1982 had no specific statutory provision to recover that zoning authority, but could enter a joint powers agreement with the county to recover zoning authority.

The commission considered a bill draft to allow a township that unilaterally transferred its zoning authority to the county before 1982 to enter a mutual agreement with that county to reacquire the zoning authority. The bill draft also repeals Section 11-33-02, which permits unilateral transfers, because those transfers are no longer valid after the 1982 constitutional amendment.

Park District Purchases

The Recreation and Parks Association requested consideration of bidding requirements imposed for park districts, which sometimes interfere with attempts to save money by joint purchasing of equipment with a city. The commission was informed that park districts must seek bids for acquisition of equipment and other nonbuilding purposes over $25,000. Cities and other political subdivisions must seek bids for building projects exceeding $100,000, but there is not a statutory bid requirement for equipment purchases by the city. The commission was informed that it appears cities are free to set bid requirements for equipment by ordinance. After further discussion among member park districts, the Recreation and Parks Association suggested that these concerns could be resolved without legislation.

Bond Issue and Excess Levy Elections

The commission reviewed a bill draft under consideration by the interim Taxation Committee to provide that elections seeking voter approval of political subdivision authority to increase property taxes or issue bonds must be held in conjunction with a statewide primary or general election. It was suggested the option of calling for special

elections to increase property taxes or considering bond issues often results in elections with low voter turnout and little public awareness.

A representative of the North Dakota School Boards Association expressed the association's opposition and said the change would be an infringement on local control. It was also pointed out that the 2014 primary election had a lower turnout than recent special elections.

Notice to Taxpayers

The commission reviewed a bill draft under consideration by the interim Taxation Committee, which would eliminate the requirement of newspaper publication of notice of budget hearings if greater than a zero increase tax rate is being considered. The bill draft requires notice to be provided to every taxpayer by personal delivery, mail, or by electronic mail, if the owner consents to receive notice by electronic mail. The bill draft provides that a consolidated notice be allowed for an individual or entity owning more than one parcel of taxable property. Existing law requires notice by the governing body in the newspaper and to taxpayers by mail if the taxpayer received a notice of an assessment increase, and the fact that only some taxpayers receive notice has been a source of confusion.

The commission reviewed a bill draft under consideration by the interim Taxation Committee, which would provide that, at any point, when a property's assessment is increased more than 10 percent and $3,000 from the prior year, the entity that made the increase, including a city, township, or county board of equalization, must notify the property owner. The bill draft provides that, if the local board of equalization is considering an increase that would make the assessment 15 percent or more above the previous year's assessment, the board must provide reasonable advance notice and opportunity to appear for the property owner. Current law requires notice to property owners at the same threshold of a 10 percent increase of more than $3,000, but that notice is required only if the assessor makes the increase and no notice is required if a local board of equalization makes an assessment increase above the threshold.

Unelected Boards

There are numerous sections of law providing for levy by the board of county commissioners or the city governing body as requested by an unelected board or commission. The commission reviewed a bill draft under consideration by the interim Taxation Committee, which would have allowed the city or county governing bodies to specify what information must be submitted with a levy request. The bill draft provides that levies requested by unelected governing bodies should use uniform terminology to ensure each such governing body provides necessary information and a request for a levy, but the final authority to make the levy belongs to the elected board of county commissioners or city governing body. The bill draft also provides that a public hearing on each levy request must be held by the city or county.

Financial Reports

The commission considered a study resolution draft to study the financial reports political subdivisions are required to provide to determine whether reports are being used or if reports should be used, consolidated, or eliminated. It is difficult to compare current reports because each county compiles reports in a different format.

Electric Transmission Reports

The commission was informed that there is no statutory reporting requirement for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. The commission considered a bill draft under consideration by the interim Taxation Committee which provides statutory language to require electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties to be filed at the time transmission and distribution company reports are required to be filed.

Property Tax Credit

The commission considered a bill draft to provide a continuation of the 2013 state-paid credit of 12 percent of property taxes levied by a taxing district. The commission was informed the estimated cost for the 2015-17 biennium is $230 million and an appropriation of that amount is included in the bill draft. The interim Taxation Committee also reviewed the bill draft.

Recommendations

The commission recommends Senate Bill No. 2054 requiring all assessors to be certified and to impose uniform training requirements for all certified assessors, effective August 1, 2017. The interim Taxation Committee also considered and recommended the same bill.

The commission recommends Senate Bill No. 2024 to allow a township that unilaterally transferred its zoning authority to the county to enter a mutual agreement with that county to reacquire the zoning authority.

The commission recommends Senate Concurrent Resolution No. 4001 directing a study to examine the financial reports political subdivisions are required to provide.

The commission recommends Senate Bill No. 2055 to require electric transmission reports. The bill would become effective in 2016. This bill was also recommended by the interim Taxation Committee.

The commission recommends House Bill No. 1059 to provide a continuation of the state-paid property tax credit. This bill was also recommended by the interim Taxation Committee.

POLITICAL SUBDIVISIONS EFFICIENCY STUDY

Senate Concurrent Resolution No. 4023 (2013) directs the study of whether political subdivisions can become more efficient and effective to reduce costs to taxpayers. The resolution states North Dakota ranks first among states in the number of local government elected officials and units of local government. The resolution states, on the basis of governmental units per 10,000 population, North Dakota has over six times the governmental units of Minnesota, over three times the governmental units of Montana, and almost two times the governmental units of South Dakota. The resolution states an appropriate balance must be determined between the desire for accessibility of local government and the cost taxpayers are willing to bear to maintain the current level of governmental units and officials. The resolution states local government representatives should have a forum to suggest measures to make local government more efficient and effective to reduce costs to taxpayers.

Political subdivisions are created under statutory authority and have only those powers specifically provided to them by statute. To enter an agreement with another political subdivision to jointly exercise powers to achieve efficiency requires specific statutory authorization. In addition to specific provisions for joint exercise of governmental powers, two provisions of law provide general authority for cooperative efforts of political subdivisions. The general grants of authority are contained in Article VII, Section 10, of the Constitution of North Dakota, and in Section 54-40.3-01.

In addition to specific statutory authorization for certain types of governmental cooperation, political subdivisions are granted broad constitutional and statutory authority to jointly perform any function that they may individually perform under law. The number of statutory provisions providing for joint functions of political subdivisions may raise some questions of interpretation, but it appears there are very few restraints on the authority of political subdivisions to jointly perform functions. The 1987-88 interim Political Subdivisions Committee, which recommended the legislation that created the commission, stated in its final report:

> The committee finds that existing constitutional and statutory law provides adequately for cooperative or joint functions of political subdivisions. The committee recommends that the Advisory Commission on Intergovernmental Relations make this issue a standing concern and attempt to provide information and encourage cooperative efforts among political subdivisions.

Testimony and Discussion

County Superintendent of Public Schools

The position of county superintendent of public schools can be traced back to territorial days. The Laws of the Territory of Dakota, as enacted in 1879, provided for the election of county superintendents, in the same manner as other county officials. At the time, the county superintendent of public schools was given statutory duties related to the creation of new school districts and the restructuring of existing district boundaries. Beginning in 1989, a county superintendent of schools was to be "selected" by the school board presidents of districts headquartered in the county and approved by the board of county commissioners. The county superintendent had administrative responsibility for all schools in the county, except those in districts that employed their own superintendent. That same year, counties were given the statutory authority to engage in the joint employment of a county superintendent of schools. In 1995, the board of county commissioners was given authority not to employ a county superintendent of schools and to designate someone to perform the statutory duties of the superintendent and, since 1995, 33 counties have opted to designate the statutory duties of the county superintendent.

Testimony from county superintendents of schools and persons designated to perform those duties regarding the current role of county superintendent of schools illustrated that each county's approaches to duties of county superintendent are slightly different. The commission was informed that some share emergency management duties and others fill other county roles to maintain either full-time or part-time employment status.

The commission received testimony from a representative of one of the regional education associations regarding the role of the eight regional education associations across the state. The commission was informed that the associations act as supporting agencies by providing professional development, technology, technological support, data systems, and curriculum enrichment. The education associations are funded through grants, a portion of the foundation aid payments to school districts, and membership fees from districts across the state.

County Jails and Detention Facilities

The commission received information from a representative of the Department of Corrections and Rehabilitation regarding county and multicounty jails and juvenile detention facilities. The commission was informed that a county is responsible for housing individuals who commit a crime in the county. Counties must consider many factors in determining when expansion of jails and detention facilities is necessary. A primary concern relates to safety, particularly relating to traveling long distances for incarceration or detention. The commission was informed that not all jails operate under the same financial structure and capacity is based on the number of inmates and the type of offender. It appears that the cost of jail and detention facilities is a cost over which counties can exert little control. When the level of incarcerations and detentions unexpectedly increases, the county has options, but all of them are based on the reality of increased cost.

Rural Fire Districts

The commission received information from the State Fire Marshal relating to rural fire protection district formation and functions. Fire departments function within city boundaries and rural fire departments function within specified boundaries. A rural fire protection district can encompass a complete city and areas outside the city. However, a city department cannot extend beyond city boundaries. The commission was informed some areas of the state are not covered by fire protection, including national grasslands, some land along the Missouri River, an area including the city of Mandaree, and areas in Sioux County.

Uniform Accounting System

The commission received a suggestion from a county auditor that North Dakota should require use of a uniform chart of accounts, or uniform accounting system, as is required in Minnesota and several other states. The commission received information that creating a uniform accounting system is feasible, but the implementation may be challenging in the smaller counties. The commission was informed that legislation would be necessary to implement a uniform accounting system and to provide the authority to enforce such a system. A representative from the State Auditor's office said a uniform system is feasible, but pointed out that substantial training would be necessary. The commission reviewed financial statements and audits from different political subdivisions and found that comparing county data is difficult. Each political subdivision has a slightly different method of accounting and documenting budgets and audits, particularly with regard to ending fund balances. The commission received information that several states across the country have implemented uniform accounting systems.

Jurisdiction and Powers of Political Subdivisions

The commission was informed that determining which political subdivisions have levy authority and which boards are appointed or elected is a complicated task. The commission received information that there are numerous different statutory references to political subdivisions within Century Code, which may lead to confusion when distinguishing those with policymaking authority from those with only administrative authority.

The commission considered a study resolution draft to examine the various different references to political subdivisions currently in law and consider whether it is possible to create more specific definitions and references based on whether the governing body of a political subdivision is elected or appointed.

Township Culverts

The commission received testimony from a representative of the Department of Transportation regarding the road and stream crossing standards as applied to culvert replacement. The commission was informed that the intent of the road and stream crossing standards is to allow water to flow naturally, minimizing the impact a roadway has on the natural discharge patterns. The intent is when there is a construction project on a particular roadway, the culverts would be replaced, eventually leading to all roadways undergoing construction. The commission received testimony from a representative of the State Water Commission indicating it does not have funds for the purpose of replacing culverts. The commission was informed the State Water Commission does cost-sharing on assessment drains, which often include culverts.

Energy Efficiency

The commission considered a bill draft that would have provided for cities to establish special assessment districts for energy efficiency improvements in residential buildings. The commission was informed that participation in the program would be voluntary. It was suggested that the program would address the needs of homeowners who cannot afford to finance energy efficiency improvements on their own and allow a city to encourage energy efficiency projects.

Recommendation

The commission recommends Senate Concurrent Resolution No. 4002 to examine statutory references to political subdivisions to determine the feasibility of distinguishing elected and unelected governing boards and clarifying lines of authority among political subdivisions.

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies.

Section 7 of 2013 House Bill No. 1026 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.

Section 10 of 2013 House Bill No. 1009 directed a study of the North Dakota Milk Marketing Board. Specifically, the committee was to examine the board's structure; its statutory duties; the manner in which it prescribes and regulates producer, distributor, and retail prices throughout the state; the manner in which it investigates and resolves concerns regarding the price and availability of milk throughout the state; and any policy or regulatory changes that the board has implemented, in order to address pricing issues and the availability of milk in the western portion of this state. The study was also to address whether the continued regulation of the Grade A dairy industry is best accomplished by the board in its current form and operating under its current statutory directives, whether changes are needed to the board or its statutory directives, and whether there are other methods by which the desired results could be effectively and efficiently achieved.

Section 2 of 2013 House Bill No. 1154 directed a study of those provisions of the Century Code that relate to professional soil classifiers, including their qualifications and examinations, and the powers and duties of the State Board of Registration for Professional Soil Classifiers, for the purpose of recommending changes to laws that are irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction.

The committee was directed to receive a report from the State Board of Agricultural Research and Education, regarding its annual evaluation of research activities and expenditures and a report from the Advisory Committee on Sustainable Agriculture, regarding the status of the committee's activities.

The committee was also directed to receive, from representatives of agricultural production groups, information regarding the effects of 2013 Senate Bill No. 2211 on various sectors of the agricultural industry, together with any suggestions for potential statutory changes. Senate Bill No. 2211 pertained to the treatment of animals.

Committee members were Representatives Jim Schmidt (Chairman), Bill Amerman, Tracy Boe, Chuck Damschen, Bob Hunskor, Dennis Johnson, Dwight Kiefert, Diane Larson, David S. Rust, Wayne Trottier, and Margaret Wall and Senators Bill L. Bowman, Jim Dotzenrod, Robert Erbele, Larry Luick, and Joe Miller. Representative John Wall served as a member of the committee until his death in July 2014.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

REWRITE OF CENTURY CODE PROVISIONS RELATING TO AGRICULTURE

Objectives and Scope of Committee's Efforts

The 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 its 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 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. To date, interim Agriculture Committees have rewritten the laws pertaining to noxious weeds, 12 agricultural commodity boards and commissions, agricultural seed, vegetable seed, flower seed, tree seed, seed potato control areas, potato certification, livestock branding, estrays, livestock dealers, and wool dealers. The 2013-14 Agriculture Committee undertook a rewrite of the laws pertaining to ginseng and apiaries. In conjunction with its studies of the North Dakota Milk Marketing Board and professional soil classifiers, the committee determined that any bills recommending changes to those chapters should likewise conform to the intent of the rewrite effort.

The 2013-14 committee supported the general premise that served as a guide for previous committees involved in rewriting existing statutes--i.e., that the goal was not to change policies that had been put in place by previous Legislative Assemblies, but rather to craft legislation that would clearly articulate rights, duties, obligations, and consequences and accurately reflect the manner in which business is conducted.

Ginseng

Background

American ginseng is a perennial plant generally found in the forested areas of the eastern United States. It is highly prized in east Asia because of its medicinal properties and is believed to lower blood pressure and cholesterol, reduce stress, and enhance strength. Ginseng requires full shade, approximately 40 inches of precipitation annually, and a highly organic soil with a low pH balance. Seeds take approximately 18 months to germinate and plants must grow for three to five years before they can be harvested. The annual value of ginseng grown in the United States is estimated to be $27 million.

Because of overharvesting in the 1970s, ginseng is now protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This multilateral treaty is enforced in the United States by the Fish and Wildlife Service, which allows each state to regulate the harvest and trade of ginseng.

North Dakota has had a regulatory program in place since 1991. The program requires the registration of growers and dealers, provides for shipping certificates and various reporting forms, and authorizes inspections and enforcement actions. However, in the 23 years since the regulatory program was enacted, North Dakota has never reported a harvest. In fact, during that period, there have been only two registered growers and no registered dealer.

Considerations - Conclusions

The committee questioned whether it is necessary to maintain an unused regulatory program and ultimately concluded that, due to an apparent lack of interest in growing ginseng, the existing language should be removed from the Century Code. However, the committee determined that, in the event an individual should ever wish to grow and market ginseng, the Agriculture Commissioner should be authorized to provide for the registration of persons buying and selling ginseng, the creation and maintenance of records, inspection requirements, and the issuance of any certificate or other documents required in accordance with state or federal law. Such an approach accommodates the various authorizations that a state must have, according to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, in order to regulate ginseng.

Recommendation

The committee recommends House Bill No. 1026 to rewrite those portions of the Century Code that pertain to ginseng.

The following cross-reference tables indicate the sources and placement of the proposed content.

Current Section	Proposed Section
4-39-01	4.1-17-01
4-39-02	4.1-17-01
4-39-03	4.1-17-01
4-39-04	4.1-17-01
4-39-05	4.1-17-01
4-39-06	4.1-17-01
4-39-07	4.1-17-01

Proposed Section	Current Section
4.1-17-01	4-39-01
	4-39-02
	4-39-03
	4-39-04
	4-39-05
	4-39-06
	4-39-07

Apiaries

Background

North Dakota is the nation's leader in honey production. In 2012 North Dakota beekeepers produced over 34 million pounds of honey, which accounted for nearly one-quarter of the nation's total honey production and amounted to an economic infusion of $64.5 million. Over 90 crops depend on insect pollinators, including almonds, berries, cotton, tree fruits, and various vegetables. In North Dakota, canola and sunflowers are the principal pollinated crops.

The latest statistics given to the committee indicated that North Dakota has 205 beekeepers, 11,050 apiaries, and approximately 482,560 colonies. Regulatory services are provided through the North Dakota Department of Agriculture by one full-time bee inspector, two seasonal bee inspectors, and one administrative assistant. North Dakota laws pertaining to apiaries were first enacted in 1923 and last reviewed by an interim committee in 1983.

Considerations

During the 2013-14 interim, the committee worked closely with the State Bee Inspector to clarify definitions, streamline the licensing and hive identification process, address issues of landowner permission in connection with the placement of apiaries, articulate the duties and powers of the State Bee Inspector, and clearly delineate legal parameters in the event that hives are found to be abandoned or require seizure or quarantine. The State Bee Inspector served as the committee's liaison with beekeepers who traditionally move their hives out of North Dakota in order to provide crop pollination services within other agricultural growing cycles.

Recommendation

The committee recommends Senate Bill No. 2025 to rewrite those portions of the Century Code that pertain to apiaries.

The following cross-reference tables indicate the sources and placement of the proposed content.

Current Section	Proposed Section
4-12.2-01	4.1-16-01
4-12.2-02	Omitted - Unnecessary
4-12.2-04	4.1-16-02
	4.1-16-04
4-12.2-04.1	4.1-16-03
4-12.2-05	4.1-16-06
4-12.2-06	4.1-16-07
4-12.2-07	4.1-16-08
4-12.2-08	Omitted - Unnecessary
4-12.2-08.1	4.1-16-18
4-12.2-14	4.1-16-09
4-12.2-15	Omitted - Unnecessary
4-12.2-16	4.1-16-12
	4.1-16-13
4-12.2-18	4.1-16-13
4-12.2-18.1	4.1-16-15
4-12.2-18.2	Omitted - Unnecessary
4-12.2-20	Omitted - Unnecessary
4-12.2-21	4.1-16-10
4-12.2-22	4.1-16-05
	4.1-16-17
4-12.2-23	4.1-16-11
4-12.2-24	4.1-16-16
4-12.2-25	Omitted - Unnecessary

Proposed Section	Current Section
4.1-16-01	4-12.2-01
4.1-16-02	4-12.2-04
4.1-16-03	4-12.2-04.1
4.1-16-04	4-12.2-04
4.1-16-05	4-12.2-22
4.1-16-06	4-12.2-05
4.1-16-07	4-12.2-06
4.1-16-08	4-12.2-07
4.1-16-09	4-12.2-14
4.1-16-10	4-12.2-21
4.1-16-11	4-12.2-23
4.1-16-12	4-12.2-16
4.1-16-13	4-12.2-16
	4-12.2-18
4.1-16-14	New law
4.1-16-15	4-12.2-18.1
4-12.2-16	4-12.2-24
4-12.2-17	4-12.2-22
4-12.2-18	4-12.2-08.1

North Dakota Milk Marketing Board Study

Background

The domestication of milk-producing animals has an anthropological history that covers thousands of years. Such animals were part of the subsistence farming efforts engaged in by nomadic tribes and the animals' protection and feeding nurtured the symbiotic relationship between the animals and the herders. In more recent societies, dairy animals not only produced milk for the use of individuals and collectives or villages, but also served in multifaceted roles that included functioning as draught animals and toward the end of their lives, as meat.

The actual commercialization of milk production came with industrialization and urbanization. So too did governmental intervention in the milk markets. The Capper-Volstead Act of 1922 provided a limited antitrust exemption for United States dairy cooperatives and in the ensuing decade, states began to adopt price controls. It was at that same time that federal milk marketing orders came into being.

Today, milk and dairy product pricing is either market-determined or administratively determined through a variety of public sector programs and policies. In addition to the federal milk marketing orders and price supports, there are import restrictions, export subsidies, domestic and international food aid programs, state-level milk marketing programs and since 1996, a multistate milk pricing organization. The list of interventions would not be complete without mention of the Chicago Mercantile Exchange, where wholesale dairy product prices are determined and futures and options contracts for milk and dairy products are traded.

Federal Milk Marketing Orders

The marketing of milk has several complicating factors. Milk is produced daily. It is perishable. It is bulky and expensive to transport and the production and retail cycles require reserves. Federal milk marketing orders were and continue to be one method by which consumers can be ensured of having an adequate supply of fresh and wholesome fluid milk and dairy producers can be guaranteed stable and reliable milk markets. These ends are achieved through the promotion and maintenance of orderly milk marketing conditions.

Federal milk marketing orders are put into place at the request of local dairy producers and their cooperatives and funded by the milk handlers. No tax dollars are directed toward their support.

Federal milk marketing orders classify milk according to its use, establish minimum prices that regulated milk buyers pay for milk, pool milk receipts and determine a blend or uniform price to be paid to dairy producers, establish regulations or pooling requirements to determine what milk is eligible to receive the blend price, ensure that milk is accurately tested, weighed, and classified, and provide useful market information. Federal milk marketing orders do not establish minimum retail prices, guarantee a dairy farmer a milk market or a profitable milk price, control milk production, or establish quality requirements.

Milk is a classified product. Class I milk is used for bottling. Class II milk is used for creams and soft manufactured products. Class III milk is used for cheese, and Class IV milk is used for butter and powder. Under a classified marketing system, handlers would pay for milk based on how it was used. Milk sold for bottling has a much higher value than milk sold for use in cheese and butter production. Under a pooling system, the total classified value of milk within a marketing area is "pooled" and producer price differentials are used to ensure that all producers within the pool share equally in the market utilization.

Portions of North Dakota have participated in federal milk marketing orders since 1967. The original Minnesota-North Dakota Federal Order included Fargo, Moorhead, Grand Forks, Thief River Falls, and the surrounding milk sheds. In June 1976, that order merged with orders covering Minneapolis-St. Paul, Duluth-Superior, and Southeastern Minnesota-Northern Iowa to form the Upper Midwest Federal Order. In 2000 the Upper Midwest Federal Order merged with the Chicago Regional Order and was renamed the Upper Midwest Order or Federal Order No. 30. Today, the eastern counties of Barnes, Cass, Cavalier, Dickey, Grand Forks, Griggs, LaMoure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steel, Traill, and Walsh participate in that order.

In 2004, 169 million pounds of North Dakota milk were pooled under Federal Order No. 30. That amounted to 36 percent of North Dakota's milk production and 1 percent of the order's total production. In 2013, 226 million pounds of North Dakota milk were pooled under Federal Order No. 30. That amounted to 66 percent of North Dakota's production and 0.7 percent of the order's total production.

The committee was told that if a dairy farmer in the western two-thirds of North Dakota marketed approximately 1 million pounds of milk per month under the jurisdiction of Federal Order No. 30, rather than under the individual handler pool pricing system, the bottling plant that accepted the producer's milk would still be paying the same amount, but that money would be taken and shared among producers throughout the entire federal order. A dairy farmer who resides south of Mandan indicated that he milks 600 cows three times per day. He said, if he had to market his milk

under Federal Order No. 30, his personal economic loss would have been $330,000 last year. He estimated that the total annual loss to western North Dakota producers would be $1.6 million.

Given the size of the economic impact, the committee questioned why dairy producers in the eastern portion of the state did not simply extricate themselves from the federal order. Thirty years ago, North Dakota dairy producers came to the Legislative Assembly for a resolution asking that the Governor and the Congressional delegation assist them in so doing. Unfortunately, federal law requires a vote of all those affected before an order can be changed. Of the 13,000 producers in Federal Order No. 30, North Dakota producers number approximately 100.

North Dakota Milk Marketing Board

The regulatory program governing the marketing of milk in the western two-thirds of North Dakota came into being in 1967, with the formation of the North Dakota Milk Marketing Board. Two years later, the Legislative Assembly provided for some amendments and the chapter has stayed relatively untouched since that time.

The first section of the chapter begins with 13 declarations, including the fact that milk is a necessary article of food for human consumption and that its production, transportation, processing, storage, distribution, and sale is an industry affecting the public health and interest. It also provides that "unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk, milk products, and frozen dairy products, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk." In order to prevent the occurrence and reoccurrence of such conditions and practices, the section declares that it is necessary to invoke the police powers of the state to provide constant supervision and regulation of the milk industry. The stated purpose of the chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. In order to accomplish this, a five-member board is created and given the authority to supervise, investigate, and regulate every segment of the state's dairy industry. The only exceptions are matters of health and sanitation, which are under the purview of other governmental agencies, and the sale of raw milk that is not Grade A. The board consists of a dairy producer, a processor, a retailer, and two consumers, all appointed by the Governor.

By statute, the North Dakota Milk Marketing Board is required to designate milk marketing areas that cover the entire state and to establish uniform minimum prices that processors must pay to dairy producers for raw milk. The prices are to reflect the available supply of raw milk, the adequacy of the reserve supply of raw milk, the balance between production and consumption, the cost of dairy feed, farm wage rates, and other factors, as appropriate. Furthermore, the board must ensure that the minimum prices are beneficial to the public interest, protect dairy producers, and preserve an adequate supply of pure and wholesome milk to the inhabitants of this state. The board must also establish, for each marketing area, the minimum prices for sales of milk products by processors or distributors to retailers and for sales of milk products by any person to consumers.

In addition to the mandatory setting of prices, the board is authorized to establish minimum prices for sales of milk products by processors to distributors; sales of frozen dairy products by a processor, distributor, or retailer to any person; sales of milk products by a processor to another processor or by a distributor to another distributor; and sales of milk products or frozen dairy products not otherwise previously addressed. The board is also authorized to establish the maximum prices for which milk products may be sold by a processor, a distributor, or a retailer to any person.

The Century Code requires the board to administer a process for licensing dairy producers, processors, distributors, and retailers and it establishes various criteria that must be met, prior to the issuance of a license. The Century Code also requires the board to prohibit or regulate disruptive trade practices and provides an illustrative, but not an exclusive, list of what those practices could entail.

The North Dakota Milk Marketing Board is supported through an assessment paid by licensed processors. The amount of the assessment is 14 cents per hundredweight on milk or milk equivalents used in the manufacturing of milk products and frozen dairy products.

Consideration

As the committee reviewed the existing statutes and listened to concerns articulated about the North Dakota Milk Marketing Board, it could find no indication that the board operated outside of its statutory authority. Having concluded that, the next point of inquiry was whether the statutory authority was still appropriate, nearly one-half century after it was first enacted. In order to do that, the committee had to overcome the hurdle of interminable sentences in interminable paragraphs that precluded readily discernible content. The committee asked for a rewrite of the chapter so that it and others interested in the chapter could more readily determine whether changes were needed, and if so, what those changes could, would, or should be.

The clarification provided by the rewrite then allowed the committee to focus on what it believed was the undercurrent of discontent regarding the marketing of milk in North Dakota--i.e., the existing licensure process and specifically, the licensing of distributors. Licensure is accomplished by means of an application process. Within 30 days of receiving an application, the North Dakota Milk Marketing Board must either issue the requested license or notify the applicant of the date and time at which a hearing will be held to receive evidence relative to the application.

With respect to distributor licenses, the North Dakota Milk Marketing Board has the statutory authority to deny licensure if it determines that:

- Persons currently licensed by the board are supplying an adequate variety and quantity of high-quality milk products and frozen dairy products to retailers and consumers in this state;
- Deliveries are being made with sufficient regularity and frequency; and
- The issuance of additional distributor licenses will result in an excess of processing plant capacity, tend to increase to unsatisfactory levels the average unit processing or average unit distribution costs for persons already licensed by the board, or otherwise tend to prevent achievement of the chapter's objectives.

In addition to requiring that the North Dakota Milk Marketing Board make determinations regarding the matter addressed in the preceding paragraph, the Century Code also requires that, as a condition of receiving a distributor's license, an applicant declare that he or she:

- Will not sell milk products or frozen dairy products to any person who is not licensed in accordance with the chapter;
- Will not purchase milk products or frozen dairy products from any person who is not licensed in accordance with the chapter;
- Will sell such milk products or frozen dairy products as are customarily handled by a distributor to any retailer who desires to purchase such products from the distributor and has a place of business in any community in which the distributor distributes or sells milk products or frozen dairy products; and
- Will offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community.

The committee was made aware of one applicant for a distributor's license who refused to make the required declarations on the application. The applicant indicated that, without having his sales staff canvass the area for potential clients, a declaration of the sort currently required would be purely speculative. He indicated that his company is permitted to distribute milk to its clients in 22 of the 23 states it serves. North Dakota is the exception. The company in question offers 14,000 to 15,000 products to its customers, including cigarettes and tobacco products, beverages, candy, groceries, health and beauty products, food service components, automotive products, and store supplies, including can liners, toilet tissue, paper towels, floor cleaners, etc. He indicated that while the company requires a minimum order, the array of products that it carries does not make the requirement burdensome.

The committee was told that there are 78 distributors in the state and while adding one additional distributor might not have a significant impact, relaxing the qualifications for a distributor's license would enable a host of other equally qualified companies to request licensure as well.

The committee determined that the North Dakota Milk Marketing Board had its genesis because of the need to ensure the availability of fluid milk at a price that balanced the interests of producers, consumers, and all entities in between. The committee was cognizant of stated concerns about large distributors wanting to provide goods and services to more lucrative accounts along well-traveled routes, but perhaps being less committed to lower-volume accounts in the more remote regions of this state. The committee ultimately determined that while changes to the licensure of distributors could provide benefits and opportunities, there was also an outside possibility that there might be certain detrimental effects. Without sufficient evidence to conclusively determine the nature and scope of such effects, the committee concluded that the most appropriate approach would be to offer a more streamlined and comprehensible chapter so that those who wished to pursue changes could more readily do so and that those who needed to understand the actions of the North Dakota Milk Marketing Board, as they related to any potential changes, would likewise be better prepared to evaluate any and all future proposals.

Recommendation

The committee recommends House Bill No. 1027 to rewrite those portions of the Century Code that pertain to the North Dakota Milk Marketing Board.

The following cross-reference tables indicate the sources and placement of the proposed content.

Current Section	Proposed Section
4-18.1-01	Omitted - Unnecessary
4-18.1-02	Omitted - Unnecessary
4-18.1-03	4.1-26-01
4-18.1-04	4.1-26-02
	4.1-26-03
	4.1-26-04
	4.1-26-05
	4.1-26-06
	4.1-26-07
4-18.1-05	4.1-26-06
	4.1-26-08
4-18.1-06	4.1-26-09
4-18.1-07	4.1-26-10
	4.1-26-11
	4.1-26-12
	4.1-26-13
	4.1-26-14
	4.1-26-15
	4.1-26-16
4-18.1-08	4.1-26-17
	4.1-26-18
	4.1-26-20
	4.1-26-23
	4.1-26-25
	4.1-26-26
4-18.1-09	4.1-26-19
	4.1-26-24
4-18.1-10	4.1-26-30
4-18.1-11	4.1-26-31
4-18.1-12	4.1-26-27
4-18.1-13	Omitted - Unnecessary
4-18.1-14	4.1-26-27
	4.1-26-29
	4.1-26-32
4-18.1-15	4.1-26-28
4-18.1-16	Omitted - Unnecessary
4-18.1-17	4.1-26-22
	4.1-26-33
	4.1-26-34
	4.1-26-36
4-18.1-18	4.1-26-21
	4.1-26-35
4-18.1-19	4.1-26-35
4-18.1-20	4.1-26-35
4-18.1-21	4.1-26-35
4-18.1-22	Omitted - Unnecessary
4-18.1-23	Omitted - Unnecessary

Proposed Section	Current Section
4.1-26-01	4-18.1-03
4.1-26-02	4-18.1-04
4.1-26-03	4-18.1-04
4.1-26-04	4-18.1-04
4.1-26-05	4-18.1-04
4.1-26-06	4-18.1-04
	4-18.1-05
4.1-26-07	4-18.1-04
4.1-26-08	4-18.1-05
4.1-26-09	4-18.1-06
4.1-26-10	4-18.1-07
4.1-26-11	4-18.1-07
4.1-26-12	4-18.1-07
4.1-26-13	4-18.1-07
4.1-26-14	4-18.1-07
4.1-26-15	4-18.1-07
4.1-26-16	4-18.1-07

Proposed Section	Current Section
4.1-26-17	4-18.1-08
4.1-26-18	4-18.1-08
4.1-26-19	4-18.1-09
4.1-26-20	4-18.1-08
4.1-26-21	4-18.1-18
4.1-26-22	4-18.1-17
4.1-26-23	4-18.1-08
4.1-26-24	4-18.1-09
4.1-26-25	4-18.1-08
4.1-26-26	4-18.1-08
4.1-26-27	4-18.1-12
4.1-26-28	4-18.1-15
4.1-26-29	4-18.1-14
4.1-26-30	4-18.1-10
4.1-26-31	4-18.1-11
4.1-26-32	4-18.1-14
4.1-26-33	4-18.1-17
4.1-26-34	4-18.1-17
4.1-26-35	4-18.1-18
	4-18.1-19
	4-18.1-20
	4-18.1-21
4.1-26-36	4-18.1-17

Soil Classifiers

Background

As humans, we tend to classify and categorize things that we find in the natural world. Whether it be rocks, soils, landscapes, or living things on the land and in the water, there are systems of classification that exist to describe these in uniform terms. These systems enable us to communicate with each other in terms that are understandable and consistent. They allow us to use descriptions in a way that can be understood by those in remote locations and without direct experience of the subject. (See, http://passel.unl.edu)

When classifying a ponderosa pine or an Abert's squirrel, the entity is readily recognizable. When classifying soils, however, a challenge exists in that the nature and properties of soils can vary widely from one location to the next, and even within distances of a few yards. Because of these challenges, a relatively new soil classifiers association brought forth, in 1973, legislation that would recognize soil classification as a profession and establish thresholds for entry into the profession. Senate Bill No. 2122 (1973) was ultimately codified as Chapter 43-36. Forty years after its enactment, the chapter remains largely unchanged.

The committee began its study with two conceptually basic queries: What is a soil classifier and what does a soil classifier do.

Current law defines a soil classifier as:

> [A] person who by reason of that person's special knowledge of the physical, chemical, and biological sciences applicable to soils as natural bodies and of the methods and principles of soil classification as acquired by soils education and soil classification experience in the formation, morphology, description, and mapping of soils is qualified to practice soil classifying and who has been duly registered by the state board of registration for professional soil classifiers.

Current law defines soil classification as:

> [A]ny service or work the adequate performance of which requires education in the physical, chemical, biological, and soil sciences, training and experience in the application of the special knowledge of these sciences to soil classification, the soil classification by accepted principles and methods, investigation, evaluation, and consultation on the effect of measured, observed, and inferred soil properties upon the various uses, the preparation of soil descriptions, maps and reports and interpretive drawings, maps and reports of soil properties and the effect of soil properties upon the various uses, and the effect of the various uses upon kinds of soil, any of which embraces such service or work either public or private incidental to the practice of soil classifying.

After reviewing the statutory language and posing the aforestated questions to members of the State Board of Registration for Professional Soil Classifiers, the committee found itself still quite perplexed. What the committee was able to discern from initial testimony is that the number of individuals currently functioning as registered soil classifiers

is exceedingly small, that the time and experiential requirements for becoming a soil classifier are exceedingly long, and that there is significant disagreement with respect to whether certain activities require the training and expertise of a registered soil classifier or whether they could be successfully conducted by others having a lesser level of training and experience.

How to Become a Soil Classifier - Current Law

Current law provides multiple paths that an individual can take in order to become a soil classifier. Each path requires that the individual pass an examination in the principles and practice of soil classifying, as prescribed by the State Board of Registration for Professional Soil Classifiers.

If an individual is a graduate of a "soils curriculum approved by the board as satisfactory," that individual must demonstrate a "specific record of an additional four years or more of experience of a grade and character which indicates to the board that the applicant is competent to practice soil classifying." A soil classifier-in-training certificate is also required. (A soil classifier-in-training certificate may be obtained by an individual who passes an examination in the fundamentals of soil classification and is a graduate of a soils curriculum approved by the board. If the individual successfully completed the examination but graduated from a soils curriculum that is not approved by the board, the individual must have "a specific record of four years of soil classification experience of a grade and character satisfactory to the board.")

If an individual is a graduate of a soils curriculum not approved by the board, the individual must have at least eight years of experience in soil classifying work. Again, that work must be "of a character and grade which indicates to the board that the applicant is competent to practice soil classifying."

If an individual holds a soil classifier-in-training certificate, the individual must have a specific record of four years or more of experience as a soil classifier-in-training "of a grade and character which indicates to the board that the applicant is competent to practice soil classifying."

Finally, if a person has at least four years of experience in soil classification research or at least four years of experience as a "teacher of soils" in a college or university that offers an approved soils curriculum, and has at least two years of soil classifying experience meeting the grade and character requirements as set forth above, that individual may obtain entry into the profession.

Committee Considerations

While the State Board of Registration for Professional Soil Classifiers maintained that the currently required level of education and experience is justified in order to ensure competency and professionalism within the ranks, the committee questioned the efficacy of the requirements, especially since a Doctor of Medicine degree (M.D.) is awarded upon the successful completion of a four-year undergraduate program and four years of medical school. With only 16 registered soil classifiers still practicing, the committee articulated its concern that the time required to repopulate the ranks could in fact lead to this profession's ultimate demise.

In accordance with the study directive, the committee asked to be presented with a bill that addressed irrelevancy, inconsistency, and illogicality, while at the same time modernizing and clarifying the governing statutes.

The bill began by articulating that soil classification means the determination of a soil's suitability for a particular purpose through:

- The examination of landscape and landform characteristics;
- The sampling or analysis, or both, of soil properties and characteristics;
- The identification and description of soil profile characteristics, including soil horizons;
- The identification of plant growth material; and
- The identification of hydric soils.

Concomitantly, the bill draft provided that soil classification did not include:

- The sampling and testing of soil for fertility status;
- The sampling and testing of soil for the presence of construction materials;
- The practice of architecture;
- The practice of engineering;

- The practice of landscape architecture; or
- Water well contracting, water well pump and pitless unit installing, monitoring well contracting, and geothermal system drilling.

The bill maintained regulatory authority in a five-member board.

In order to become a soil classifier, it was proposed that one hold a baccalaureate or a graduate degree, in a science-related field, from an accredited institution of higher education. At least 15 of the credits constituting the degree would have to come from a list of qualifying soil-related courses or be approved by the board.

An applicant would have to submit evidence of having achieved a passing score on a fundamentals of soil science examination and submit documentation of experience in or exposure to the identification of soils, soil surveys, the preparation of reports pertaining to soil identification or soil surveys, the identification of plant growth materials, septic system sitings, land reclamation, or other similar activities deemed by the board to be related to the classification of soil. Finally, the individual would have to obtain a passing score on a practical examination administered by the board. In order to ensure that there was ample time for experiential learning, the board suggested that, unless waived, there must be a waiting period of at least three years between the date on which the applicant completed the fundamentals of soil science examination and the date of the practical examination.

The committee heard testimony from a number of soil classifiers regarding their education, their training, and the special skills they believed were required in order to correctly and accurately classify soils. The committee also heard testimony regarding ways in which individuals could be trained to perform certain limited but clearly delineated tasks, and the committee heard testimony regarding the need for an employer's exemption.

After due consideration, the committee directed that the bill exempt from the chapter certain individuals who identify hydric soils for purposes of wetland delineation. In order to be eligible for the first exemption, the individual must be employed by this state, must perform the identification of hydric soils within the normal course of the individual's employment, and must have completed a course in wetland delineation. In order to be eligible for the second exemption, the individual must be employed by a private entity and must perform the identification of hydric soils within the normal course of the individual's employment. The individual's employer must take legal responsibility for the work and determinations of the individual, and the individual must have completed a course in wetland delineation. The course, as referenced with respect to both exemptions, must provide the student with a basic understanding regarding the interaction of vegetation, soils, and hydrology in wetlands and provide the student with the background necessary to identify wetlands and determine their boundaries. Courses meeting these requirements are generally about 40 hours in length and offered by accredited institutions of higher education or governmental agencies.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite those portions of the Century Code that pertain to the State Board of Registration for Professional Soil Classifiers.

The following cross-reference tables indicate the sources and placement of the proposed content.

Current Section	Proposed Section
43-36-01	43-36.1-01
43-36-02	43-36.1-02
	43-36.1-03
43-36-03	Omitted - Unnecessary
43-36-04	43-36.1-04
43-36-05	43-36.1-05
43-36-06	43-36.1-06
43-36-07	43-36.1-07
43-36-08	43-36.1-09
43-36-09	43-36.1-10
43-36-10	43-36.1-13
43-36-10.1	Omitted - Unnecessary
43-36-11	Omitted - Unnecessary
43-36-12	43-36.1-13
43-36-13	Omitted - Unnecessary
43-36-14	43-36.1-14
43-36-15	43-36.1-15
43-36-16	43-36.1-16
43-36-17	43-36.1-17
43-36-18	43-36.1-18
43-36-19	43-36.1-19

Current Section	Proposed Section
43-36-20	43-36.1-20
43-36-21	43-36.1-22
43-36-22	43-36.1-21
43-36-23	43-36.1-24
43-36-24	43-36.1-25
43-36-25	43-36.1-01

Proposed Section	Current Section
43-36.1-01	43-36-01
43-36.1-02	43-36-02
43-36.1-03	43-36-02
	43-36-05
43-36.1-04	43-36-04
43-36.1-05	43-36-05
43-36.1-06	43-36-06
43-36.1-07	43-36-07
43-36.1-08	New section
43-36.1-09	43-36-08
43-36.1-10	43-36-09
43-36.1-11	New section
43-36.1-12	New section
43-36.1-13	43-36-10
	43-36-12
43-36.1-14	43-36-14
43-36.1-15	43-36-15
43-36.1-16	43-36-16
43-36.1-17	43-36-17
43-36.1-18	43-36-18
43-36.1-19	43-36-19
43-36.1-20	43-36-20
43-36.1-21	43-36-22
43-36.1-22	43-36-21
43-36.1-23	43-36-24
43-36.1-24	43-36-25

ADDITIONAL RECOMMENDATION

Since the inception of the effort to rewrite Century Code sections that pertain to agriculture, interim committees have at times been given the flexibility to determine which chapters would be subjected to the rewrite process. At other times, interim committees have been directed to study specific issues, rather than to focus solely on rewriting the various sections and chapters. While the latter tends to consume more of a committee's time, both provide opportunities to achieve clarity, consolidation, and modernization of the statutes. Ultimately, a law that clearly articulates rights, powers, duties, and consequences provides due notice to those affected by it, provides a framework for those charged with its administration, and reduces conflicts of interpretation.

The committee acknowledged the importance of the rewrite effort, as well as the results to date.

The committee recommends House Bill No. 1028 to continue the study of 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.

REPORTS

The committee received a report from the State Board of Agricultural Research and Education. In accordance with Section 4-05.1-19, the board examined adverse economic impacts on crops and livestock, developed ongoing strategies for the provision of research solutions and resources to negate such adverse economic impacts, and developed ongoing strategies for the dissemination of research information through the North Dakota State University Extension Service. The board also established the 2015 priorities for both the Agricultural Experiment Station and the Extension Service.

The Advisory Committee on Sustainable Agriculture did not meet during the 2013-14 interim and therefore did not submit a report, as required by Section 4-01-24.

The committee received, from a representative of agricultural production groups, information regarding the effects of 2013 Senate Bill No. 2211 on various sectors of the agricultural industry. Senate Bill No. 2211 pertained to the humane treatment of animals.

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 Representatives Chet Pollert (Chairman), Larry Bellew, Tracy Boe, Michael D. Brandenburg, Al Carlson, Jeff Delzer, Bill Devlin, Mark A. Dosch, Eliot Glassheim, Bette Grande, Ron Guggisberg, Kathy Hawken, Rick Holman, Keith Kempenich, Gary Kreidt, Bob Martinson, Corey Mock, David Monson, Jon Nelson, Kenton Onstad, Mark Sanford, Robert J. Skarphol, Roscoe Streyle, Blair Thoreson, Don Vigesaa, Alon Wieland, and Clark Williams and Senators Bill Bowman, Ron Carlisle, Robert Erbele, Tony Grindberg, Joan Heckaman, Ray Holmberg, Ralph L. Kilzer, Jerry Klein, Karen K. Krebsbach, Gary A. Lee, Tim Mathern, David O'Connell, Larry J. Robinson, Mac Schneider, Terry M. Wanzek, Rich Wardner, and John M. Warner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

The following duties assigned to the Budget Section by law or by Legislative Management directive were acted on during the 2013-14 interim:

1. **Status of the State Board of Agricultural Research and Education (Section 4-05.1-19(10))** - This section requires, within the duties of the State Board of Agricultural Research and Education, 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 and the three months following the close of a regular 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 that is awarded funds under Chapter 15-69 to provide an annual audit report 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 expansion of 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, excluding the six months prior to a regular legislative session and the three months following the close of a regular 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.

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.

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 2013-15 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 $190,000 is available for the 2013-15 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 (ITD) 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. **Report regarding any transfers between line items and between subdivisions in excess of $50,000 (Section 3 of 2013 House Bill No. 1012)** - This section requires the Department of Human Services (DHS) to report to the Budget Section after June 30, 2014, on any transfers in excess of $50,000 made during the 2013-15 biennium between line items within each subdivision and between subdivisions (effective July 1, 2013).

22. **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.

23. **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.

24. **State Board of Higher Education's semiannual 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 semiannual project variance reports regarding construction projects valued at more than $250,000.

25. **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 funds as well as recommendations presented to the state investment board regarding investment of funds in the legacy and budget stabilization funds.

26. **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.

27. **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.

28. **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.

29. **Secretary of State semiannual report on credit card usage rates and credit card fees paid (2013 House Bill No. 1002, Section 7)** - This bill requires the Secretary of State to report semiannually to the Budget Section during the 2013-14 interim on credit card usage rates and credit card fees paid by the Secretary of State.

30. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2014 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium.

31. **Housing Finance Agency report on flood-impacted housing assistance grants (House Bill No. 1016, Section 4)** - This bill provides Budget Section receive a report from the Housing Finance Agency during the 2013-14 interim on the use of funds for grants for flood-impacted housing assistance.

32. **State Historical Society report on project pool line item funding (2013 House Bill No. 1018, Section 6)** - This bill provides Budget Section receive a report from the State Historical Society by July 1, 2014, on the use of funds in the project pool line item.

33. **State Water Commission semiannual report on changes made to the commission's priority projects list (2013 House Bill No. 1020, Section 14)** - This bill provides Budget Section receive a report from the State Water Commission every six months during the 2013-14 interim on any changes made to the State Water Commission priority projects list presented to the 63rd Legislative Assembly.

34. **Department of Transportation airplane replacement (2013 House Bill No. 1033, Section 5)** - This bill requires Budget Section approval for the Department of Transportation (DOT) expenditure of more than $4 million to purchase replacement airplanes for the department's fleet.

35. **Department of Commerce annual report on the use of one-time funding for the grant program for nursing homes, basic care facilities, and providers that serve individuals with developmental disabilities located in oil-producing counties (2013 House Bill No. 1358, Section 8)** - This bill provides Budget Section receive a report from the Department of Commerce annually on the use of one-time funding during the 2013-15 biennium for the grant program for nursing homes, basic care facilities, and providers that serve individuals with developmental disabilities located in oil-producing counties.

36. **Department of Human Services annual report on the use of one-time funding for the grant program for critical access hospitals in oil-producing counties (2013 House Bill No. 1358, Section 10)** - This bill provides Budget Section receive a report from DHS annually on the use of one-time funding during the 2013-15 biennium for the grant program for critical access hospitals in oil-producing counties.

37. **Attorney General annual report on the use of one-time funding for grants to law enforcement agencies in oil-impacted counties (2013 House Bill No. 1358, Section 11)** - The bill provides Budget Section receive a report from the Attorney General annually during the 2013-15 biennium on the use of one-time funding for grants to law enforcement agencies in oil-impacted counties where crime activities have increased or in other counties experiencing crime-related activities originating in oil-impacted counties, for crime related needs of the Attorney General's office, and for the development of a uniform law enforcement and custody manual.

38. **Hub city annual report on use of funding received from allocations from the oil and gas gross production tax (2013 House Bill No. 1358, Section 12)** - This bill provides Budget Section receive a report from a representative of a hub city annually on the use of funding received from allocations from the oil and gas gross production tax under Section 57-51-15.

39. **Department of Veterans' Affairs report on Agent Orange (2013 House Bill No. 1405, Section 2)** - This bill provides Budget Section receive a report from the Department of Veterans' Affairs during the 2013-14 interim on any funds received to provide services to veterans exposed to Agent Orange, the grants provided, and the outcomes of the services provided.

40. **State Board of Higher Education annual report on the status of the consolidation of North Dakota University System information technology services (2013 Senate Bill No. 2003, Section 22)** - This bill provides Budget Section receive a report from the State Board of Higher Education annually during the 2013-15 biennium on the status of the consolidation of North Dakota University System information technology services, including the location of staff members providing those services.

41. **State Board of Higher Education funds distributed from the capital projects contingency pool (2013 Senate Bill No. 2003, Section 24)** - This bill provides Budget Section receive a report from the State Board of Higher Education during the 2013-14 interim regarding funds distributed from the capital projects contingency pool.

42. **North Dakota State University report on the status of the Minard Hall project (2013 Senate Bill No. 2003, Section 31)** - This bill provides Budget Section receive a report from North Dakota State University (NDSU) regarding the status of the Minard Hall project.

43. **Department of Transportation new license plate design (2013 Senate Bill No. 2012, Section 8)** - This bill requires DOT to obtain Budget Section approval of its recommendation for a new license plate design.

44. **Office of Management and Budget report on possible relocation of the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center (2013 Senate Bill No. 2015, Section 4)** - This bill provides Budget Section receive a report from OMB during the 2013-14 interim regarding options for the possible relocation of the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center.

45. **Department of Corrections and Rehabilitation annual report on the department's prison population management plan (2013 Senate Bill No. 2015, Section 6)** - This bill provides Budget Section receive a report from the Department of Corrections and Rehabilitation annually on the department's prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing.

46. **Department of Commerce report on the Experimental Program to Stimulate Competitive Research and Research North Dakota (2013 Senate Bill No. 2018, Section 37)** - This bill provides Budget Section receive a report from the Department of Commerce before June 1, 2014, on the Experimental Program to Stimulate Competitive Research and Research North Dakota, including the Research North Dakota venture investment program.

47. **Department of Career and Technical Education report on performance measures of the science, technology, engineering, and mathematics program (2013 Senate Bill No. 2019, Section 3)** - This bill provides Budget Section receive a report from the Department of Career and Technical Education during the 2013-14 interim regarding performance measures of the STEM program.

48. **The Office of Management and Budget report on its information technology relocation and consolidation study (2013 Senate Bill No. 2021, Section 8)** - This bill provides Budget Section receive findings and recommendations from OMB by March 31, 2014, regarding its information technology relocation and consolidation study of information technology equipment operated by the Attorney General and other agencies.

49. **Information Technology Department and the Office of Management report on information technology desktop support services (2013 Senate Bill No. 2021, Section 9)** - This bill provides Budget Section receive findings and recommendations from ITD and OMB before January 1, 2014, regarding its study of all state agencies' information technology desktop support to determine the feasibility and desirability of centralization of desktop support services.

50. **Abandoned oil and gas well plugging and site reclamation fund (Section 38-08-04.5)** - This section requires the Industrial Commission to report to the Budget Section on the status of the abandoned oil and gas well plugging and site reclamation fund and related information.

51. **Housing units owned or master leased by cities, counties, school districts, or other employers of essential service workers (Section 54-17-40)** - This section requires the Housing Finance Agency to report quarterly to the Budget Section on the progress being made to reduce the overall number of units owned, master leased, or subsidized by these entities.

52. **North Dakota Outdoor Heritage Advisory Board (Section 54-17.8-07)** - This section provides Budget Section receive a report from the North Dakota Outdoor Heritage Advisory Board on a biennial basis regarding the activities of the board.

53. **Three Affiliated Tribes investment of oil and gas tax receipts (Section 57-51.2-02)** - This section provides Budget Section receive a report from the Three Affiliated Tribes annually regarding investment of oil and gas tax receipts in essential infrastructure and fees, expenses, and charges the tribe imposes on the oil industry.

54. **State Fire Marshal report on fire departments funding (Section 18-04-02)** - This section provides Budget Section receive a biennial report from the State Fire Marshal summarizing the expenditures by certified city fire departments, certified rural fire departments, and certified fire protection districts of funds received under section 18-04-05 and the information on committed and uncommitted reserve fund balances of these entities.

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 2014 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.
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.
3. **Department of Human Services transitional living facility report (House Bill No. 1012, Section 17)** - This bill requires DHS to report at the December 2014 Budget Section meeting on the status of the eight-unit transitional living facility in the Southeast Human Service Center region.

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 2013-14 interim:

1. **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.
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. **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.
4. **Provision of contract services by the Life Skills and Transition Center (Section 25-04-02.2)** - This section provides, subject to Budget Section approval, the Life Skills and Transition Center may provide services under contract with a governmental or nongovernmental person.
5. **Waiver of exemption of special assessments levied for flood control purposes on state property (Section 40-23-22.1)** - This section provides state property in a city is exempt from special assessments levied for flood control purposes unless the governing body of the city requests waiver of the exemption and the exemption is completely or partially waived by the Budget Section. The exemption does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education.
6. **Termination of food stamp program (Section 50-06-05.1(17))** - This section provides, subject to Budget Section approval, DHS may terminate the food stamp program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the coupon bonus payments.
7. **Termination of energy assistance program (Section 50-06-05.1(19))** - This section provides, subject to Budget Section approval, DHS may terminate the energy assistance program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the energy assistance program payments.
8. **Transfers resulting in program elimination (Section 54-16-04(1))** - This section provides, subject to Budget Section approval, the Emergency Commission may authorize a transfer which would eliminate or make impossible the accomplishment of a program or objective for which funding was provided by the Legislative Assembly.
9. **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.
10. **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.

11. **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.

12. **Purchases of "put" options (Section 54-44-16)** - This section requires OMB to report any purchases of "put" options to the Budget Section.

13. **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.

14. **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.

15. **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.

16. **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 ITD 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.

17. **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.

18. **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.

19. **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.

20. **Federal block grant hearings (2013 Senate Concurrent Resolution No. 4001)** - This resolution authorizes the Budget Section, through September 30, 2015, to hold any required legislative hearings for federal block grants.

21. **Purchase or lease of aircraft by a state agency or entity of state government (House Bill No. 1033, Section 1)** - This bill requires Budget Section approval for state agency or other entity of state government purchase or lease of an aircraft without specific authorization from the Legislative Assembly. This bill does not apply to aircraft purchased or leased by the Adjutant General's office or the University of North Dakota School of Aviation.

22. **State Board of Higher Education report on purchase of Research Enterprise and Commercialization building (2013 Senate Bill No. 2003, Section 23)** - This bill provides Budget Section receive a report from the State Board of Higher Education if the Research Enterprise and Commercialization building is purchased before July 1, 2015.

23. **Approval of North Central Research Extension Center and Williston Research Extension Center property (2013 Senate Bill No. 2352, Section 1)** - This bill requires Budget Section approval conveyance of the North Central Research Extension Center and Williston Research Extension Center property.

24. **Approval of State Board of Higher Education imposing an assessment or requiring individual institutions of higher education to pay for goods or services provided by or through the North Dakota University System office (Section 15-10-54)** - This section requires Budget Section approval before the State Board of Higher Education may impose an assessment on or otherwise require that individual institutions of higher education pay for any goods or services provided by or through the University System office.

25. **State Water Commission expenditure of additional amounts that become available in the resources trust fund and the water development trust fund in excess of the 2013-15 biennium appropriation (House Bill No. 1020, Section 4)** - This bill requires Budget Section approval for State Water Commission

expenditure of funds that become available in the resources trust fund and the water development trust fund in excess of 2013-15 biennium appropriations.

26. **North Dakota State University report on increased spending authority for the Minard Hall project (2013 Senate Bill No. 2003, Section 31)** - This bill requires Budget Section approval for NDSU to increase spending authorization for the Minard Hall project.

OFFICE OF MANAGEMENT AND BUDGET

2011-13 Biennium General Fund Revenues and Expenditures

The Budget Section received a report from OMB on the final status of the general fund for the 2011-13 biennium.

Unobligated general fund balance - July 1, 2011		$996,832,711
Balance obligated for authorized carryover from the 2009-11 biennium		106,955,389
Total beginning general fund balance - July 1, 2011		$1,103,788,100
Add total general fund revenue for the 2011-13 biennium		5,155,854,560
Total available		$6,259,642,660
Less expenditures		
Original appropriations	($4,066,853,792)	
Legislative appropriations - Special session	(96,832,668)	
Contingent legislative appropriations - Special session	(73,000,000)	
Authorized carryover from the 2009-11 biennium	(106,955,389)	
Emergency appropriations available to spend in the 2011-13 biennium	(329,686,240)	
Supplemental appropriations - 2009-11 biennium	(60,314,701)[1]	
2011-13 emergency appropriations utilized in the 2009-11 biennium	519,254	
Total expenditures		(4,733,123,536)
Unspent authority returned to the general fund		50,106,455
Ending balance before transfers		$1,576,625,579
Transfer to budget stabilization fund	($181,060,585)[2]	
Net effect of other transfers, adjustments, and cash certifications	494,192	
Total transfers and adjustments		(180,566,393)
Unobligated general fund balance - June 30, 2013		$1,396,059,186

[1]Supplemental (deficiency) appropriations include:

Department of Human Services	$20,900,000
Department of Transportation	36,138,893
State Department of Health	426,000
Department of Public Instruction - Professional development grant program	45,000
Job Service North Dakota	5,847
Highway Patrol	300,000
Tax Commissioner	981,855
Attorney General	70,000
Minot State University	52,745
State Fair Association	674,361
State Treasurer	720,000
Total supplemental appropriations	$60,314,701

[2]Transfer based on 2013-15 biennium general fund appropriations and the statutory cap of 9.5 percent of appropriations, pursuant to Section 54-27.2-01.

2011-13 Biennium General Fund Emergency and Supplemental Appropriations and General Fund Turnback

The Budget Section received a report from OMB on the 2011-13 biennium agency emergency and supplemental appropriations amounts. Emergency and supplemental appropriations totaled $60.3 million. The Budget Section received a report from OMB on the 2011-13 biennium agency unspent general fund appropriation amounts (turnback). Unspent (turnback) 2011-13 biennium general fund appropriation authority totaled approximately $50.1 million. The Department of Public Instruction had turnback of $11.9 million, of which $10 million related to mill levy reduction grants. The Department of Human Services had turnback of $14 million related primarily to long-term care program savings.

2013-15 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 2013-15 biennium. The following is a summary of the status of the state general fund,

based on actual revenue collections through August 2014, and reflecting the August 2014 revised revenue forecast for the remainder of the 2013-15 biennium:

Unobligated general fund balance - July 1, 2013		$1,396,059,186
Balance obligated for unspent emergency appropriation authority		165,874,199
Balance obligated for authorized carryover from the 2011-13 biennium		89,503,462
Total beginning general fund balance - July 1, 2013		$1,651,436,847
Add		
General fund collections through August 2014	$3,280,745,030	
Forecasted general fund revenue for the remainder of the 2013-15 biennium	2,450,691,417	
Total revenues		5,731,436,447
Total available		$7,382,873,294
Less		
Legislative appropriations - One time	($2,433,567,701)	
Legislative appropriations - Ongoing	(4,429,019,653)	
Contingent appropriation - Dickinson State University	(6,000,000)	
Contingent appropriation - Department of Public Instruction	(5,000,000)	
Authorized carryover from the 2011-13 biennium	(89,503,462)	
2013-15 emergency appropriations utilized in the 2011-13 biennium	163,812,041	
Total appropriations		(6,799,278,775)
Estimated ending general fund balance - June 30, 2015		$583,594,519[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 maximum of 9.5 percent of general fund appropriations.

August 2014 Revenue Forecast

The Budget Section received the OMB August 2014 revenue forecast. The revised revenue forecast for the 2013-15 biennium anticipates general fund revenue will total $4.9 billion, $285 million more than the 2013 legislative forecast. The preliminary 2015-17 biennium revenue forecast anticipates total general fund revenue of $5.2 billion for the 2015-17 biennium, $293 million more than the 2013-15 biennium revised forecast.

Employee Bonuses

The Office of Management and Budget reported to the Budget Section in September 2013 and September 2014 regarding the number of agencies when the number of employees receiving bonuses exceeded 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 2013, OMB reported the Department of Veterans' Affairs provided five employee bonuses, four more than the 25 percent limitation. The Office of Management and Budget provided 32 employee performance bonuses, one more than the 25 percent limitation. In September 2014, OMB reported no agencies made requests or exceeded the 25 percent limitation as of July 1, 2014.

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
Aeronautics Commission	$2,500	Additional pay to fill in for open FTE position
Agriculture Commissioner	$3,192	Payment for assuming Deputy Agriculture Commissioner duties due to a vacancy
Department of Commerce	$1,531	Settlement agreement
Game and Fish Department	$1,000	Payment for a temporary workload adjustment due to a vacancy
Governor's office	$1,000	Payment for assuming duties due to a vacancy
State Department of Health	$1,203	Additional pay to fill in for open FTE position
Industrial Commission	$4,700	Recruitment bonus paid to an employee working in another state agency
School for the Blind	$5,804	Payment for summer contracts outside of four teachers' nine-month contracts
State Library	$502	Payment for assuming information technology duties due to a vacancy
Tax Commissioner's office	$6,000	Retroactive pay
Tax Commissioner's office	$1,000	Temporary workload adjustment
Tax Commissioner's office	$500	Temporary workload adjustment
Department of Transportation	$705	Pay adjustment

Capital Improvements Preliminary Planning Revolving Fund

The Office of Management and Budget requested authority 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 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 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 $190,000 from the capital improvements preliminary planning revolving fund for projects pursuant to Section 54-27-22. The Budget Section approved the OMB request to use $190,000 from the capital improvements preliminary planning revolving fund for prepayment of consulting and planning fees for the proposed capital improvements projects as follows:

Agency	Project	Estimated Cost of the Project	Preliminary Planning Request	Office of Management and Budget Approval Recommendation	Office of Management and Budget Recommended Funding Level
Facility Management for Capitol Grounds Planning Commission	Two-tier parking deck	$9,000,000	$24,900	Yes	$22,000
Williston State College	Storm water master plan	Not provided	$90,000	Yes	45,000
Dickinson State University	Student academic center		$100,000	No	
Valley City State University	Fine arts building	$19,800,000		Yes	79,000
School for the Deaf Resource Center for Deaf and Hard of Hearing	Smith building (Administration)	$1,669,800	$25,000	Yes	20,000
School for the Deaf Resource Center for Deaf and Hard of Hearing	Accessible link between spears building and trades building	$2,300,000	$25,875	No	
School for the Deaf Resource Center for Deaf and Hard of Hearing	Boiler replacement	$734,800	$12,000	No	
State Historical Society of North Dakota	Stabilization of Double Ditch State Historic Site	$1,150,000	N/A	Yes	15,000
Parks and Recreation Department	Accessible comfort stations	$757,000	N/A	Yes	9,000
Total funding					$190,000

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 2013-15 biennium to date through September 2014, approximately $65.5 million had been received by the state, and total payments received to date were $433.3 million. As directed in the initiated measure adopted by voters in November 2008, funds received in 2013 and 2014 were deposited into the tobacco settlement trust fund and the tobacco prevention and control trust fund as follows:

Period	Tobacco Settlement Trust Fund (Amounts Shown in Millions)	Tobacco Prevention and Control Trust Fund (Amounts Shown in Millions)	Total (Amounts Shown In Millions)
April 2013	$20.1	$11.4	$31.5
April 2014	22.8	11.2	34.0
Total	$42.9	$22.6	$65.5

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

Tobacco settlement trust fund	
Community health trust fund (10 percent)	$4,286,928
Common schools trust fund (45 percent)	19,291,175
Water development trust fund (45 percent)	19,291,175
Total transfers from the tobacco settlement trust fund	$42,869,278
Tobacco prevention and control trust fund	22,608,485
Total tobacco settlement proceeds received during the 2013-14 interim	$65,477,763

2013-15 Biennium Budget Form Changes

Pursuant to Section 54-44.1-07, OMB did not propose any changes to the 2015-17 biennium budget data.

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. 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
June 2013		
Information Technology Department	2013 through 2017	$1,196,000
Attorney General, Bureau of Criminal Investigation	October 2013 through September 2016	$314,195
September 2013		
Department of Veterans' Affairs	October 2013 through September 2014	$50,000
December 2013		
Department of Veterans' Affairs	2014 through 2015	$1,900,000
June 2014		
Department of Public Instruction	5 years	$1,900,000/year
Department of Public Instruction	5 years	$750,000/year
Department of Public Instruction	October 2014 through March 2016	$250,000
September 2014		
Department of Public Instruction	July 2015 through June 2017	$400,000

Information Technology Study

Pursuant to Section 8 of 2013 Senate Bill 2021, the Budget Section received a report from OMB regarding findings and recommendations regarding its information technology relocation and consolidation study of information technology equipment operated by the Attorney General and other agencies. The Budget Section learned OMB contracted with UmmelGroup International, Inc., to conduct the study. The UmmelGroup International, Inc., reported the study resulted in a recommendation to consolidate the information technology equipment of the Public Service Commission, the Department of Mineral Resources Oil and Gas Division, and the State Water Commission with ITD, but not to consolidate the equipment of the Attorney General's office.

Missouri River Correctional Center Land Use Study

Pursuant to Section 4 of 2013 Senate Bill 2015, the Budget Section received a report from OMB regarding the results of the Missouri River Correctional Center (MRCC) land use study. The Budget Section learned OMB contracted with BWBR Architects, Inc., to conduct the study. BWBR Architects reported the objective of the study was to develop options for the feasibility and desirability of relocating the MRCC to a site adjacent to the Youth Correctional Center (YCC) in Mandan and to determine whether consolidation of the MRCC and YCC facilities would result in operational efficiencies for the Department of Corrections and Rehabilitation. BWBR Architects reported the land use study was to review options to develop all or a portion of the current MRCC site into a public park, and in addition, the study was to identify if the MRCC should be moved due to recent flooding issues and if its current site would be better-suited as a public day park.

BWBR Architects reported the results of the study concluded it may be physically feasible to relocate the MRCC to a site adjacent to YCC and maintain adequate sight and sound separation between the MRCC and YCC facilities, but relocating the MRCC facility to a site adjacent to YCC would not be desirable because of the risk associated with maintaining strict physical separation of two distinct populations located in close proximity to each other. BWBR Architects reported the study also concluded there are few opportunities to share services that would result in operational efficiencies or operational cost-savings that might offset the risk. The study found the existing MRCC land is well-suited for a public day park. Opportunities for a park could utilize either the full site or just a portion which would

allow the MRCC facility to continue to occupy a portion of the site. BWBR Architects reviewed the MRCC land use options, including:

Missouri River Correctional Center Land Alternatives	Total Projected Cost for the Park Proposal During the 2015-17 Biennium
Relocate MRCC to existing YCC site near Mandan. Of the 900 available acres, 300 acres of existing cropland would continue to be rented, and 600 acres would be converted to a large, regional day use park.	$11,030,000
Relocate MRCC to existing YCC site near Mandan. Of the 900 available acres, 300 acres of existing cropland would continue to be rented, 520 acres would be converted to a large, regional day use park, and 80 acres adjacent to the existing MRCC site would remain undeveloped.	$11,897,000
Retain MRCC on the existing site. Of the 900 available acres, 300 acres of existing cropland would continue to be rented (and would act as a physical buffer between MRCC and the day use park), 200 acres would be converted to a day use park, and the rest of the site would remain undeveloped.	$7,110,000

State Board of Higher Education Project Variance Reports

The Office of Management and Budget reported to the Budget Section regarding semiannual capital 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 semiannual project variance reports. The 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.

In June 2014, OMB reported project variance reports for University System projects through December 31, 2013, as follows:

	Number of Projects	Adjusted Authorization	Current Contract Amounts	Contract (Over)/Under Authorization
Projects Specifically Authorized by the Legislative Assembly				
Bismarck State College	5	$34,135,000	$12,672,213	$21,462,787
Lake Region State College	1	$5,901,617	$5,901,617	
Williston State College	5	$34,181,172	$15,780,565	$18,400,607
University of North Dakota	15	$244,171,592	$37,566,103	$206,605,489
North Dakota State University	15	$139,776,050	$48,455,166	$91,320,884
North Dakota State University Extension Services	6	$17,894,581	$11,679,328	$6,215,253
Northern Crops Institute	1	$926,971	$926,971	
North Dakota Forest Service	1	$785,000		$785,000
North Dakota State College of Science	5	28,935,879	19,791,461	$9,144,418
Mayville State University	5	$9,908,328	$8,744,788	$1,163,540
Minot State University	11	$44,013,460	$22,860,591	$21,152,869
Valley City State University	6	$19,241,990	$18,989,968	$252,022
Dakota College at Bottineau	8	$10,146,109		$10,146,109
Projects Approved by the State Board of Higher Education				
Williston State College	1	$525,000	$360,802	$164,198
University of North Dakota	5	$4,774,610	$2,368,344	$2,406,266
Minot State University	3	$6,000,000	$974,602	$5,025,398

REPORTING OF LEGISLATIVE BUDGET CHANGES - 2015 SESSION

The Budget Section considered and approved an alternative method of reporting legislative changes relating to the development of the state budget during legislative sessions.

The alternative method will affect the way legislative budget changes are reflected on the "official" weekly budget status report and in statements of purpose of amendments to appropriation bills by comparing legislative budget changes in detail to the base level (the previous biennium legislatively approved funding levels excluding "one-time" funding items) rather than to the executive budget recommendation. This alternative reporting format will not affect any processes used by the Governor or OMB. Base level revenue amounts will be adopted by the Budget Section at its December meeting, prior to the legislative session, based on the executive budget revenue forecast. The Budget Section approved the alternative method directing the Legislative Council staff to use, for budget status and statement of purpose of amendment reporting and comparison purposes, base level amounts rather than executive budget recommended amounts. The new reporting format will be implemented for the 2015 legislative session.

NORTH DAKOTA UNIVERSITY SYSTEM

Capital Projects

During the 2013-14 interim, the University System requested Budget Section approval relating to capital construction projects. The Budget Section acted on the following University System capital project requests:

Dakota College at Bottineau

- **Campus generator** - Pursuant to Section 15-10-12.1 and 48-01.2-25, the Budget Section **approved** an increase in spending authority by $74,380, from $375,820 to $450,200. The additional funding is as follows: $16,675 from the capital projects contingency pool and $57,705 from operating funds (March 2014).

North Dakota State College of Science

- **Football complex renovation** - Pursuant to Section 48-01.2-25, the Budget Section **approved** an increase in spending authority by $150,000, from $1,350,000 to $1,500,000. The additional funding will be raised by the college (June 2014).

North Dakota State University

- **Sanford Health Athletic Complex** - Pursuant to Section 15-10-12.1, the Budget Section **approved** an increase in spending authority by $5,595,644, from $35,404,356 to $41,000,000. The additional funding is from private donations (December 2013).
- **Center for Computationally Assisted Science and Technology** - Pursuant to Section 15-10-12.1, the Budget Section **approved** an increase in spending authority by $3,610,000, from $660,000 to $4,270,000, and pursuant to Section 48-01.2-25 to increase the scope of the Center for Computationally Assisted Science and Technology project. The additional funding is from federal funds (December 2013).
- **Northern Crops Institute feed mill** - Pursuant to Section 15-10-12.1, the Budget Section **approved** an increase in spending authority by $826,971, from $100,000 to $926,971, and pursuant to Section 48-01.2-25 to increase the scope of the Northern Crops Institute feed mill project. The additional funding is from private donations ($597,730) and special funds ($229,241) (December 2013).
- **Extension Service 4-H camp** - Pursuant to Section 15-10-12.1 and 48-01.2-25, the Budget Section **approved** a change in scope and to increase spending authority by $700,000, from $1,900,000 to $2,600,000. The additional funding is from fundraising activities (March 2014).

University of North Dakota (UND)

- **Aerospace building** - Pursuant to Section 15-10-12.1, the Budget Section **approved** spending authorization of $24,950,000 for an aerospace building project. The funding is from private donations or grants (December 2013).
- **Collaborative energy center** - Pursuant to Section 15-10-12.1, the Budget Section **approved** spending authorization of $15.5 million for a collaborative energy center project. The funding is from private donations or grants (December 2013).
- **Law School renovation and addition** - Pursuant to Section 48-01.2-25, the Budget Section **approved** to increase spending authority by $3,013,276, from $11,400,000 to $14,413,276. The additional funding is as follows: $2,507,448 from private funds and $505,828 from available contingency funds (June 2014).
- **UND School of Medicine and Health Sciences renovation** - Pursuant to Section 15-10-12.1, the Budget Section **approved** to increase spending authority by $600,000. The additional funding is as follows: $300,000 from tuition income and $300,000 from grant income (June 2014).

Valley City State University

- **President's house accessibility** - Pursuant to Section 48-01.2-25, the Budget Section **approved** to increase spending authority by $200,000 of private funds related to the historic president's house accessibility project (September 2013).

Williston State College

- **Stevens Hall renovation** - Pursuant to Section 48-01.2-25, the Budget Section **approved** a reduction in scope and an increase in spending authorization by $517,551, from $11,630,354 to $12,147,905. The additional funding is from the capital contingency pool (September 2013).

- **Workforce training project** - Pursuant to Section 15-10-12.1 and Section 48-01.2-25, the Budget Section **approved** an increase in scope and budget of the workforce training project by $1,500,000, from $6,738,267 to $8,238,267. The additional funding is from private funding sources (donations), a reduction in funds from revenue, and increased borrowing authority from the Bank of North Dakota (March 2014).

Local Funds Report

Pursuant to Section 15-10-12.3, the Budget Section received a report on sources of funds received for construction projects of entities under the State Board of Higher Education. The University System presented a report detailing sources of funds received for construction projects of entities under the State Board of Higher Education.

Capital Projects Contingency Pool

Pursuant to Section 24 of 2013 Senate Bill No. 2003, the Budget Section received a report on funds distributed from the capital projects contingency pool. The University System reported in December 2013 that the 2013 Legislative Assembly provided $5,483,413 for the capital projects contingency pool. The University System allocated $858,984 for the following: a campus drive project at Williston State College ($90,000), a Stevens Hall renovation project at Williston State College ($517,551), and an Erlandson remodel and expansion project at Lake Region State College ($251,433). Since the December 2013 report, the University System has allocated an additional $4,114,453 for the following: a communications and creative arts center at Bismarck State College ($560,626), the School of Medicine and Health Sciences renovation and addition and law school renovation and space utilization study for UND ($1,813,785), new construction of the STEM classroom and laboratory building at NDSU ($1,247,709), the renovation of Old Main at North Dakota State College of Science ($358,778), campus-wide drainage improvements at Minot State University ($95,559), the hillside slope failure at Valley City State University ($21,321), and the campus backup generator at Dakota College at Bottineau ($16,675). Contingency pool funding of $509,976 remains unallocated as of October 29, 2014.

Master Plan

The Budget Section received a report from the University System regarding the system's master plan. The University System reported the system has retained a consultant to conduct an analysis of all 11 institutions to evaluate data on enrollment, classroom utilization, facility utilization, and demographic analysis for degree production and gaps between degree production and employment opportunities.

Information Technology Data Breach

The University System presented information to the Budget Section regarding an information technology data breach. A data breach is an unauthorized dissemination of information. The University System reported that viruses were used to access usernames and passwords to gain unauthorized access to a University System server. A forensic analysis concluded with 99 percent assurance none of the data accessed was used. The University System reported credit counseling was provided to users affected by the data breach, and changes had been made to prevent another data breach, which include: equipment upgrades, reengineering desktop support, mandatory security screening for all employees, and workplace review to identify potential changes to prevent a data breach.

Phishing Email Attack

The University System presented information to the Budget Section regarding an NDSU phishing email attack and subsequent unauthorized access to personal information at NDSU. The Budget Section learned NDSU employees received approximately 140 fraudulent emails asking employees to click a link to confirm their salary revision documents. The University System reported eight individuals clicked on the link allowing the unauthorized users to access the employees' personal payroll data information, and as a result, seven of the eight employees' payroll checks were stolen. The University System reported the total amount of lost wages was over $28,600 and NDSU reimbursed the employees for the lost wages. The Budget Section learned Core Technology Services was alerted of the compromised accounts, and the ConnectND employee direct deposit self-service system was disabled. The University System reported no other campus received the emails and the University System is in the process of installing detection and threat prevention devices on each campus, and the new device would not have prevented the emails from being received, but would have likely blocked the personal information from being provided to the unauthorized

users. The University System reported this was a targeted phishing attack, and most email systems are designed to detect and block mass phishing attempts, not targeted attacks.

Consolidation of North Dakota University System Information Technology Services

Pursuant to Section 22 of 2013 Senate Bill No. 2003, the Budget Section received a report on the status of the consolidation of University System information technology services and the location of staff members providing those services. The University System reported that the new University System information technology building was dedicated in November 2013, 101 information technology staff had moved into the office building, and 30 staff members are located in Fargo. The Budget Section also learned the University System has retained a consultant to conduct an analysis of all 11 institutions to evaluate data on enrollment, classroom utilization, facility utilization, and demographic analysis for degree production and gaps between degree production and employment opportunities.

NORTH DAKOTA STATE UNIVERSITY

Minard Hall Project

North Dakota State University provided a report to the Budget Section regarding the status of the Minard Hall project pursuant to Section 31 of 2013 Senate Bill No. 2003. North Dakota State University reported in December 2013, the Minard Hall project was substantially complete, and the building was fully occupied for the fall 2013 semester.

North Dakota State University informed the Budget Section that the law firm Anderson, Bottrell, Sanden, and Thompson is representing NDSU in two separate litigation proceedings. North Dakota State University brought suit against the state fire and tornado fund, which provides property insurance for NDSU. North Dakota State University has also brought suit against selected project contractors. The Budget Section learned written discovery and depositions are ongoing for both lawsuits, and a trial date has not yet been set for the lawsuit against the state fire and tornado fund. The Budget Section learned a trial date for the lawsuit against the project contractors will be in March 2015.

The Budget Section learned approximately $4.8 million of the $22.9 million total project cost is associated with the collapse of Minard Hall.

DICKINSON STATE UNIVERSITY

Theodore Roosevelt Presidential Library

The Budget Section learned the City of Dickinson has committed $3 million of nonstate funds for the required matching to access the state funding of up to $6 million from the general fund for the Theodore Roosevelt Presidential Library pursuant to 2013 Senate Bill No. 2018. The City of Dickinson may commit an additional $5 million for the project. The Budget Section learned that Dickinson State University has created an entity for the project named the Theodore Roosevelt Library Foundation, and the foundation anticipates receiving approval for nonprofit status from the Internal Revenue Service. The Budget Section learned that current projections from the foundation anticipate the new center will have 125,000 to 150,000 visitors each year. The foundation anticipates creating a website enabling the general public to access the works of Theodore Roosevelt.

MINOT STATE UNIVERSITY

Campus Security

The Budget Section learned Minot State University requested a $1,485,000 grant from the oil and gas impact grant fund and was awarded $1,018,000 to make additional safety and security improvements, including enhancing emergency response, enhancing video surveillance, and improving lighting on campus.

UNIVERSITY OF NORTH DAKOTA

School of Medicine and Health Sciences Walkway

The Budget Section learned the walkway project at the family practice center in Bismarck will be managed by Sanford Health, and the School of Medicine will be providing funds for its share of the cost of the project to Sanford Health. The Budget Section also learned the project is on schedule, and an ownership agreement between the School of Medicine and Sanford Health will be prepared to establish ownership, responsibilities of operation and maintenance, and the method for transferring funds.

School of Medicine and Health Sciences Naming Opportunities

The 2013 Legislative Assembly authorized construction of a new School of Medicine and Health Sciences building project of up to $122,450,000. The Budget Section learned the UND Foundation is allowing individuals and organizations to name the building or rooms in the building depending on the level of funds donated to the foundation. The Budget Section learned the UND Foundation, by using the naming opportunities, is leveraging the investment made by the Legislative Assembly to generate additional funding, primarily for student scholarships.

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 information regarding the North Dakota Agricultural Experiment Station and the NDSU Extension Service budget along with activities of the board, its initiatives and projects, including enhancing crop development and protection efforts and enhancing the research capacity at the research extension centers.

DEPARTMENT OF COMMERCE

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 and 54-65-03. The Department of Commerce reported $53.4 million of state centers of excellence funds and $204 million in nonstate funds have generated a total economic impact of an estimated $691 million. The Department of Commerce also reported each centers of excellence award is monitored for a period of 6 to 10 years, and centers are reviewed after a period of at least 3 full fiscal years. The review includes determining whether the centers are having the desired economic benefits. The Department of Commerce reported that centers of excellence and centers of research excellence participants and the Centers of Excellence Commission assessment include:

Center of Excellence and Center of Research Excellence	Commission's Assessment
Lake Region State College - Dakota Precision Ag Center	Meets expectations
NDSU - Center for Advanced Electronics Design and Manufacturing	Meets expectations
NDSU - Center for Agbiotechnology: Oilseed Development	Meets expectations
NDSU - Center for Surface Protection	Meets expectations
UND - Petroleum Research, Education, and Entrepreneurship Center Meets	Meets expectations
UND - Unmanned Aircraft Systems (UAS) Research, Education, and Training Enhancement Grant: Predator Mission Aircrew Training System (PMATS)	Meets expectations
UND - UAS Center of Excellence	Meets expectations
Dickinson State University Strom Center for Entrepreneurship and Rural Revitalization - Institute for Technology and Business	Needs improvement
NDSU - Center for Biopharmaceutical Research and Production	Needs improvement
NDSU - Center for Integrated Electronic Systems	Needs improvement
UND - Center of Excellence in Space Technology and Operations	Needs improvement
UND - SUNRISE BioProducts Center of Excellence for Chemicals, Polymers, and Composites	Needs improvement
UND Research Foundation - Center for Passive Therapeutics	Needs improvement
UND Research Foundation - Center of Excellence in Life Sciences and Advanced Technology	Needs improvement
Bismarck State College - National Energy Center of Excellence	Released from postaward monitoring
UND Energy and Environmental Research Center (EERC) - National Center for Hydrogen Technology	Released from postaward monitoring
Williston State College - Petroleum Safety and Technology Center	Released from postaward monitoring
Valley City State University	Closed - Unspent funds returned
NDSU - Center for Sensors, Communication, and Control	No assessment until June 2014
Dakota College at Bottineau - Entrepreneurial Center for Horticulture	No assessment until June 2014
UND - UAS Software Curriculum and Development	No assessment until June 2014
UND - Grand Forks Air Force Base Realignment Business Transition Program	No assessment until June 2014
NDSU - Research 1 Expansion	No assessment until June 2014
UND Center for Innovation - Certificate Programs for Motion Video and Activity-Based Intelligence Analysis	No assessment until June 2014
UND CFI - V2 Aerospace, Inc., Technical Assistance Request	No assessment until June 2015
NDSU - Material and Nanotechnology Center	No assessment until June 2015
UND - Limited Deployment Cooperative Airspace Project	No assessment until June 2015
NDSU - ADS-B Miniaturization Program (LD-CAP)	No assessment until June 2015
UND - Global Hawk Sensor Operator Part Task Trainer	No assessment until June 2015
UND Center for Innovation - Joint Distributed Common Ground System	No assessment until June 2015
UND - Airspace Integration Team - UAS National Test Site (Phase I, II, III)	No assessment until June 2015
UND CFI - Enhanced Use Lease (EUL) for Grand Forks Air Base III	No assessment until June 2015
NDSU - Center for Advanced Technology Development and Commercialization	No assessment until June 2016
UND - Law Enforcement and Public Safety Agency Small UAS Course	No assessment until June 2016

Center of Excellence and Center of Research Excellence	Commission's Assessment
NDSU - Center for Life Sciences Research and Applications	No assessment until June 2016
NDSU - Center for Technologically Innovative Process and Products	No assessment until June 2016
UND - Center for Avian Therapeutics for Infectious Diseases	No assessment until June 2016

Renaissance Fund Organizations Annual Audits

The Department of Commerce reported on the annual audits of renaissance fund organizations pursuant to Section 40-63-07(9). The department reported 55 cities have a renaissance zone, eight of which have established renaissance fund organizations. The Budget Section learned three of the eight renaissance fund organizations have submitted independent auditor's reports to the department with no findings, and the remaining five renaissance fund organizations are in the process of submitting reports. The Budget Section learned four renaissance fund organizations, including Casselton, Jamestown, West Fargo, and Fargo, have closed and do not require an audit.

The department reported the following tax credit summary to the Budget Section in September 2014:

Renaissance Tax Credits	Total Credits Authorized	Total Credits Claimed	Total Credits Available[1]	
			Committed	Uncommitted
Category 1 - (0 to 5,000 population)	$985,866	$520,866[2]	$465,000	
Category 2 - (5,001 to 30,000 population)	250,000	250,000[3]		
Category 3 - (Over 30,000 population)	7,264,134	4,835,000[4]	1,763,750	$665,384
Total	$8,500,000	$5,605,866	$2,228,750	$665,384

[1]Of the $2,894,134 credits available, $563,750 reserved for Fargo, $465,000 reserved for Hope, 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.

[2]Category 1 cities - Casselton ($37,500), Hazen ($15,500), Mayville ($145,150), and Hope ($322,716).

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

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

Long-Term Care Grants

Pursuant to Section 8 of 2013 House Bill No. 1358, the Budget Section received a report regarding the status of grants awarded to nursing homes, basic care facilities, and providers of services to individuals with developmental disabilities located in oil-producing counties. The Department of Commerce reported the department is planning two grant rounds with $1 million to be awarded in both January 2014 and January 2015. The department reported January 2014 grant applicants were received from 36 organizations with approximately 2,572 FTE employees and will be awarded approximately $389 per FTE position.

Experimental Program to Stimulate Competitive Research and Research North Dakota

Pursuant to Section 37 of 2013 Senate Bill No. 2018, the Budget Section received a report regarding the Experimental Program to Stimulate Competitive Research and Research North Dakota, including the Research North Dakota venture investment program. The Department of Commerce reported the number of applications and approved awards as follows:

Program	Applications Received	Applications Approved	Awards Approved
Research North Dakota	4	2	$78,401
Research North Dakota BIO	1	1	$1,000,000
Venture grant	7	6	$599,222

GAME AND FISH DEPARTMENT

Land Acquisition Requests

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

Cavalier County

The Budget Section received and approved a request from the Game and Fish Department to purchase 160 acres adjacent to existing wildlife management areas in Cavalier County. The purchase price of the land was $105,000 for 80 acres ($1,312.50 per acre) and $110,000 for 80 acres ($1,375 per acre).

The Budget Section received and approved a request from the Game and Fish Department to purchase 160 acres adjacent to existing wildlife management areas in Cavalier County. The purchase price of the land was $220,000 ($1,375 per acre).

Sargent County

The Budget Section received and approved a request from the Game and Fish Department to purchase 47 acres adjacent to existing wildlife management areas in Sargent County. The purchase price of the land was $187,000 ($3,978.23 per acre).

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 2003 Legislative Assembly enacted Section 47-30.1-24.1 in an effort to resolve the issue of state agency unclaimed property. Section 47-30.1-24.1 provides within one year of receipt of state agency property, the administrator of unclaimed property shall notify the agency by certified mail. The Commissioner of the 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 2013-14 interim, its Unclaimed Property Division identified 6 state agencies with 16 unclaimed properties as of September 2013 and 11 state agencies with 15 unclaimed properties as of June 2014. Certified letters were mailed to those agencies. All identified 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 September 2013 and in June 2014.

PARKS AND RECREATION DEPARTMENT

Expansion of Public Improvements

Pursuant to Section 48-01.2-25, the Budget Section received a request from the Parks and Recreation Department for the approval of an expansion of capital improvement projects and to increase special funds spending authority pursuant to Chapter 54-16. The Budget Section **approved** an expansion of the following capital projects: Lewis and Clark State Park, campsite expansion $149,000; Fort Stevenson State Park, administrative office $95,000; and Lake Sakakawea State Park, campground $54,000. The Budget Section **approved** under Chapter 54-16 to increase special funds spending authority for these projects by $298,000, from $1,770,000 to $2,068,000.

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, 2013, Job Service North Dakota reported the trust fund balance was $153.7 million. Job Service North Dakota reported the fund is 16 percent over the target and the difference between the target and the actual balance will be reduced in future years with the rate setting process.

INFORMATION TECHNOLOGY DEPARTMENT

Annual Reports

Pursuant to Section 54-59-19, the Budget Section received the ITD 2012-13 and 2013-14 annual reports. The Information Technology Department reported revenue for fiscal year 2014 totaled $61.9 million, and the majority of ITD revenue is generated from computer hosting (34 percent), software development (32 percent), and direct billing service fees (20 percent). The Information Technology Department reported the rates charged for fees and services by ITD compare favorably to those charged by surrounding states, and through the annual customer survey, customers of ITD report the following:

- 89.7 percent agree that ITD services met their business needs.
- 97.5 percent viewed ITD as a trusted business partner.
- 88.5 percent agree ITD provides technology direction.
- 88.5 percent agree ITD is aligned with their mission.

The Information Technology Department reported within the next 5 to 10 years, it is anticipated that many of the applications currently hosted within ITD will be hosted with "cloud" storage. The Budget Section learned ITD received three bids in response to a request for proposal (RFP) to enhance the state network and provide additional bandwidth. The Information Technology Department reported it awarded the contract to Dakota Carrier Network.

Information Technology Desktop Support Study Results

Pursuant to Section 9 of 2013 Senate Bill No. 2021, the Budget Section received a report from ITD regarding findings and recommendations and legislation required to implement recommendations of the ITD desktop support study. The Budget Section learned that the results of the study include the recommendation for a hybrid model, in which 32 smaller agencies would receive desktop support from ITD and 16 larger agencies would provide their own desktop support.

DEPARTMENT OF HUMAN SERVICES

Transfers in Excess of $50,000

The Budget Section received a report from DHS regarding transfers in excess of $50,000 pursuant to Section 3 of 2013 House Bill No. 1012. The Budget Section learned through September 2014, the department had the following transfers between line items and between subdivisions of House Bill No. 1012 in excess of $50,000:

Transfers	General Fund	Total Funds	Explanation
Medicaid Management Information System (MMIS) project		$774,611	Funds were transferred for the MMIS project from the grants line item in program and policy to the operating expense line item in administration and support to provide the required state matching funds.

Status of Medicaid Management Information System

The Budget Section received reports from DHS on the status of the MMIS computer project. The department reported expenditures through July 2014 totaled $59.1 million. Operational readiness testing has been complete, and parallel testing with the legacy system claim payments, user acceptance, data conversion and electronic data exchange, and complete system testing are close to completion. Affordable Care Act (ACA) requirements are being finalized into the new system. The department reported expenditures as of July 2014 for the MMIS computer project as follows:

Description	Budget	Expenditures Through July 2014	Remaining
General fund	$7,533,297	$5,024,951	$2,508,346
Federal funds	78,043,573	51,847,955	26,195,618
Other funds	2,968,137	2,193,526	774,611
Total	$88,545,007	$59,066,432	$29,478,575

As of September 2014, the department did not have an estimate of when the new system will be operational.

Critical Access Hospital Grants

Pursuant to Section 10 of House Bill No. 1358, $9.6 million was appropriated from the strategic investment and improvements fund to DHS for one-time grants to critical access hospitals. The department developed policies and procedures for the disbursement of the grant funding. The department awarded $700,000 to the North Dakota Hospital Association to develop a system to assist hospitals with verifying patient personal and health insurance information. The Budget Section learned the association used a portion of the funds to purchase a software program from Emdeon Business Services, LLC, to provide hospitals with a source to verify personal data and health insurance data. The following critical access hospitals were awarded $4,450,000 for the first year of the biennium:

Critical Access Hospital	Location	Grant Payment as of January 2014
Southwest Healthcare Services	Bowman	$100,349
St. Luke's Hospital	Crosby	138,650
Jacobson Memorial Hospital	Elgin	95,342
McKenzie County Medical Center	Watford City	458,663
Mountrail County Medical Center	Stanley	343,103
Heart of America Medical Center	Rugby	365,005
St. Joseph's Hospital and Health Center	Dickinson	1,791,591
Tioga Medical Center	Tioga	359,515
Mercy Medical Center	Williston	797,782
Subtotal - Critical access hospital payments		$4,450,000
North Dakota Hospital Association - Patient personal and health insurance information		700,000
Grant payment as of January 2014		$5,150,000

LEGACY AND BUDGET STABILIZATION FUNDS

Advisory Board Report

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. 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. The market value of the legacy fund was $2,455 million as of August 31, 2014. The market value of the budget stabilization fund as of August 31, 2014, was $587.7 million. The advisory board reported assets had been held in 100 percent fixed income-type investments, and the advisory board revised the investment policy and recommended the following asset allocation mix for the legacy fund--30 percent broad US equity securities, 20 percent broad international equity securities, 35 percent fixed income assets, 5 percent core real estate, and 10 percent diversified real assets. The Budget Section learned the transition is to be completed in January 2015. The advisory board has not made any changes to the budget stabilization fund investment policy.

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. 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 2013 and September 2014. 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 2013 the number of checks outstanding increased by 13 percent from state fiscal year 2012 and a total of $5.2 million in outstanding checks existed for fiscal years 2011, 2012, and 2013. The State Treasurer provided a listing of 2,440 outstanding checks which were sent to the Unclaimed Property Division of the Department of Trust Lands in October 2013 totaling $386,297.

The State Treasurer reported as of September 2014, 14,237 checks totaling $3.9 million were outstanding for fiscal years 2012, 2013, and 2014. The State Treasurer provided a listing of 2,344 outstanding checks to be sent to the Unclaimed Property Division of the Department of Trust Lands in October 2014, which total $376,689.

SECRETARY OF STATE

Credit Card Usage and Fees

Pursuant to Section 7 of 2013 House Bill No. 1002, the Budget Section received semiannual reports on credit card usage rates and credit card fees paid by the Secretary of State. The Secretary of State reported in September 2013 that contractor licensing has increased by 97 percent in the past four years and collectability of fees has increased significantly since the office began accepting credit cards. The Secretary of State reported in September 2014 that while fees expended to date for the 2013-15 biennium are less than budgeted, the usage of credit cards is anticipated to increase significantly when the agency's new software system is deployed.

HOUSING FINANCE AGENCY

Flood-Impacted Housing Assistance

The 2013 Legislative Assembly appropriated, out of the state disaster relief fund, the sum of $1.5 million to the Housing Finance Agency for the purpose of providing grants for flood-impacted housing assistance. Pursuant to Section 4 of 2013 House Bill No. 1016, the Budget Section received a report regarding the status of grants awarded for flood-impacted housing assistance. The Housing Finance Agency reported that initially $1.5 million was awarded to the Minot Housing Authority. However, residents were relocated more rapidly than anticipated; therefore, the Minot Housing Authority reduced its request to $20,000.

Housing Units Owned or Master Leased for Essential Service Workers

The 2013 Legislative Assembly appropriated $15.4 million from the general fund to the housing incentive fund and provided an aggregate tax credit of $20 million for the purpose of assisting developing communities to address an unmet housing need or alleviate a housing shortage. Pursuant to Section 54-17-40, the Budget Section received a report regarding an update on progress being made to reduce the overall number of housing units owned, master leased, or subsidized by cities, school districts, or other employers of essential service workers. In September 2013, the Housing Finance Agency reported 18 projects have been awarded approximately $20.4 million from the housing incentive fund, and none of the projects reduce the number of existing housing units owned by political subdivisions, but the projects will help prevent the need for political subdivisions to create additional housing units. In December

2013, the Budget Section learned $16.5 million has been committed to 16 projects that would create 934 housing units, of which 220 units are for essential service workers.

STATE HISTORICAL SOCIETY

Project Pool Report

Pursuant to Section 4 of 2013 Senate Bill No. 2015, the Budget Section received a report regarding the use of funds in the State Historical Society's project pool line item. The State Historical Society presented the following schedule as of May 31, 2014, of expenditures from the pool:

Description	Project Pool	Expended as of May 31, 2014	Balance
Technology coordinator	$135,000	$37,371	$97,629
Temporary salaries	240,000	12,567	227,433
Governor's gallery	125,000	63,200	61,800
Historic site repairs	250,000	14,714	235,286
Promotion and marketing	30,000	10,476	19,524
Information technology	70,000	34,614	35,386
Lawrence Welk homestead	100,000	0	100,000
Total	$950,000	$172,942	$777,058

STATE WATER COMMISSION

Project Priorities

Pursuant to Section 14 of 2013 House Bill No. 1020, the Budget Section received semiannual reports on changes to the State Water Commission project priorities list presented to the 63rd Legislative Assembly. The State Water Commission reported in March 2014 that it approved three new projects relating to water systems in Dickinson, Watford City, and Williston totaling $32 million. The commission reported in September 2014 that the commission reallocated $3,053,000 to the water supply category and $15,500,000 to the Southwest Pipeline Project for increases in project costs, and the funds were provided from the general water management category.

Cost-Share Policy Changes

The Budget Section learned the State Water Commission has proposed changes to the commission's cost-share policy, which include providing local government cost-share grants of up to 60 percent of the water supply project construction costs or grants and loan funding of up to 80 percent of the water supply project construction costs for projects addressing a lack of water supply for domestic use or upgrading a water supply to primary Safe Drinking Water Act standards. In addition, the commission proposed changes including special consideration for improvements in service areas where the anticipated cost per user each year divided by the average annual median income per user is in the top quartile of its peer group water systems as determined by the Chief Engineer. The State Water Commission reported the top 25 percent could qualify for up to 80 percent for water supply project construction loans.

FARGO FLOOD CONTROL

Funding and Expenditures

The State Water Commission presented information to the Budget Section on Fargo flood control funding and expenditures to date. The Budget Section learned the commission provided reimbursements of $48,342,234 since 2009 for Fargo flood control funding and expenditures as follows:

Biennium	Authorization	Expenditure
2009-11	$45,000,000	$8,526,912
2011-13	30,000,000	$29,732,748
2013-15 (amount to date)	100,000,000	$10,082,574
Total	$175,000,000	$48,342,234

F-M Area Flood Diversion Board of Authority

The F-M Area Flood Diversion Board of Authority presented information to the Budget Section regarding an update on congressional authorization of the diversion project and on the status of the self-insured crop insurance pool; mitigation efforts, alternatives, and costs; easements; and the project budget pursuant to Section 15 of 2013 House Bill No. 1020. The board reported the F-M Area Diversion Project was one of 26 water projects specifically named in the federal Water Resources Reform and Development Act signed into law by the President in June 2013. The board has contracted with NDSU to develop a formal policy on crop insurance. The board reported the impact to land in Richland County in North Dakota and Wilkin County in Minnesota has been reduced by project changes including a one-mile alignment move to the north, increasing the natural flow of the river through town, and adding adjustable weir gates to reduce staging water levels during a possible summertime flood. The board reported the priorities for the 2015-17 biennium include in-town levees; ring levees in Oxbow, Bakke, and Hickson; and diversion preconstruction

engineering, land acquisition, and construction. The board anticipates a budget of $314.1 million for fiscal year 2016, which includes $100 million for land acquisitions, $189.6 million for construction, $10.5 million for design and permitting, $9 million for technical oversight and project management, and $5 million for other obligations. The board reported a technical study and developmental process developed by the board included a temporary water retention feature that will hold water for a week-and-a-half during large flood events, and the new staging area will only operate in events larger than a 35-foot flood.

MNDAK Upstream Coalition

The MNDAK Upstream Coalition presented information to the Budget Section on the impacts of the Fargo flood control project and mitigation efforts, alternatives, and costs pursuant to Section 15 of House Bill No. 1020. The coalition reported the potential upstream impacts include farmland flooding, damage to roads and infrastructure, flooding of cemeteries, and relocation of residents and farmsteads.

- **Farmland flooding** - The coalition reported residents of Hickson and Bakke have expressed concern with the ring dike being constructed around the two communities, and residents are concerned the ring dike will reduce the value of homes and increase the risk of a catastrophic failure if the cities are surrounded by water from the proposed diversion project. The coalition reported the F-M Area Diversion Authority has been exploring a supplemental insurance plan to compensate farmers for losses as a result of the project and are not covered by traditional crop insurance. The coalition reported the insurance would provide 65 percent coverage, and the farmer could incur a loss up to 35 percent. The coalition reported the Army Corps of Engineers has outlined easements as mitigation for impacts, and flowage easements would be a one-time payment for 25 percent of the appraised value of the land. The coalition reported the corps maps indicate the staging area will include 50,000 acres, and the corps anticipates 32,000 acres will be mitigated. The coalition reported 18,000 acres are anticipated to flood with less than one foot of water.
- **Damage to roads and infrastructure** - The coalition reported residents, schools, emergency personnel, and townships have expressed concern about damage to infrastructure. The cemetery authority has expressed concerns regarding over 3,000 graves located in the staging area. The coalition reported many cemeteries cannot be ring diked because of the depth of the water or proximity to land features, and burials would be restricted during certain times of the year because of hydraulic pressure on recent interments.
- **Alternatives** - The coalition reported the Red River Basin Commission completed a study on long-term flood solutions which provides a solution that would distribute water storage in streams and tributaries which could reduce the flow of the Red River at Fargo by 20 percent. The city of Fargo is constructing dikes and levees to a level of 43 feet and the city of Moorhead is protected to 44 feet. The coalition reported the Red River Basin study indicated that the Red River would not exceed 40 feet if distributed storage is developed on a valleywide basis.

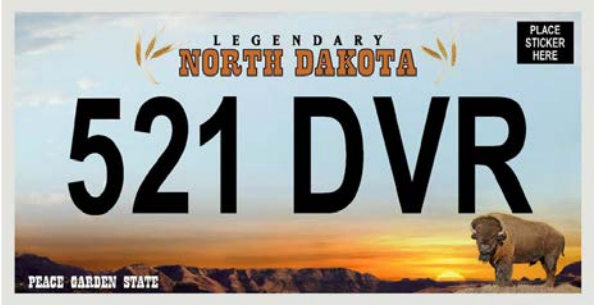
DEPARTMENT OF TRANSPORTATION

Replacement Airplanes

Pursuant to Section 5 of 2013 House Bill No. 1033, the Budget Section approved the DOT request to spend in excess of $4 million for replacement airplanes. The Budget Section learned DOT purchased a 1998 KingAir for $2,737,000 as a replacement for a 1997 Piper Cheyenne aircraft. The Department of Transportation reported the cost of purchasing the second replacement aircraft, a 2010 Cessna Caravan, was $1,725,000 after trading in a 1975 Cessna Skymaster, and the total cost for both planes was $4,462,000.

New License Plate Design

Pursuant to Section 8 of 2013 Senate Bill No. 2012, the Budget Section approved the Department of Transportation's new license plate design shown below. The Department of Transportation reported the new plate design features include flat plate technology, the slogan "Legendary" which is used by the Division of Tourism, pictures of a buffalo and the North Dakota landscape, and the words "Peace Garden State" as required by Section 39-04-12.



COUNTY AND TOWNSHIP ROADS AND BRIDGES INFRASTRUCTURE REPORT

In June 2014, the Budget Section received a report from the Upper Great Plains Transportation Institute regarding county, township, and tribal roads and bridges infrastructure needs. The Upper Great Plains Transportation Institute reported over the next 20 years, $5,398.4 million is projected to be needed for unpaved road improvements, $2,685 million for paved road improvements, and $327 million for bridge improvements. The Upper Great Plains Transportation Institute also reported the projected funding for the paved road investment needs is 17 percent more than the previous projection due primarily to higher construction costs. The Upper Great Plains Transportation Institute also reported for fiscal years 2015 and 2016, $548 million is projected to be needed for unpaved road improvements and $377 million for paved road improvements, and the institute estimates $70 million is needed each biennium for the next five bienniums for bridge improvements.

ATTORNEY GENERAL'S OFFICE

Law Enforcement Grants

Pursuant to Section 11 of 2013 House Bill No. 1358, the Budget Section received an annual report on the use of one-time funding for grants to law enforcement agencies in oil-impacted counties where crime activities have increased or in other counties experiencing crime-related activities originating in oil-impacted counties, for crime-related needs of the Attorney General's office, and for the development of a uniform law enforcement and custody manual. The Attorney General reported of the $9.6 million available, only $290,000 has not yet been awarded.

HUB CITY REPORTS

Pursuant to Section 12 of 2013 House Bill No. 1358, the Budget Section received a report from hub cities on the use of funding received from allocations from oil and gas gross production tax under Section 57-51-15. A total allocation of $375,000 per fiscal year for each full or partial percentage point of its private covered employment engaged in the mining industry, according to data compiled by Job Service North Dakota, is provided to each hub city. The hub cities receiving allocations during the 2013-15 biennium are Minot, Dickinson, and Williston. The City of Minot reported funds have been used to finance infrastructure, including sewer system upgrades and improvements, airport-related projects, and none of the funds were used for flood recovery. The City of Dickinson reported it has received $8.5 million to date, and the funds have been used for the following projects: public works facility project, reconstruction and realignment of Empire Road, construction of State Avenue North, and construction of 21st Street West. The City of Williston reported funds are being used for infrastructure projects, including road projects, water and sewer projects, and airport projects.

DEPARTMENT OF VETERANS' AFFAIRS

Veterans Exposed to Agent Orange

Pursuant to Section 2 of 2013 House Bill No. 1405, the Budget Section received a report regarding funds received to provide services to veterans exposed to Agent Orange, the grants provided, and the outcomes of the services provided through May 31, 2014. The Department of Veterans' Affairs reported it has spent $29,447 of the $50,000 general fund appropriation for the following items: two billboard signs, Agent Orange literature and information packets, travel expenses for townhall roundtable events, and Agent Orange expert fees. The department also reported it has received approximately 200 calls from Vietnam veterans and their family members in response to placing the billboards, and the department anticipates conducting a townhall roundtable event in each county by May 2015.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Inmate Report

Pursuant to Section 6 of 2013 Senate Bill No. 2015, the Budget Section received an annual report on the Department of Corrections and Rehabilitation's prison population management plan, inmate admissions, and the number of inmates not admitted after sentencing. The Department of Corrections and Rehabilitation reported in September 2014 that the 2013-15 biennium average male inmate population for all facilities was 1,402, the 2013-15 biennium average female inmate population for all facilities was 171, and the department has not refused to admit any inmates to date.

DEPARTMENT OF CAREER AND TECHNICAL EDUCATION

Performance Measures of the Science, Technology, Engineering, and Mathematics Program

Pursuant to Section 3 of 2013 Senate Bill No. 2019, the Budget Section received a report regarding performance measures of the STEM program. The Department of Career and Technical Education reported it had received funding for the following four initiatives:

STEM Initiative	Funding
Engineering by Design (EbD) or Project Lead the Way (PLTW) curriculum adoption	$300,000
STEM matching grants	$150,000
North Dakota STEM Network	$300,000
STEM Infusion grant	$200,000

The department reported 28 high schools with over 2,800 students have adopted the STEM-based curriculum, and an additional three high schools will be adopting the curriculum during the next school year. The department reported three school districts have been provided a grant, up to the maximum grant amount of $15,000, for the STEM matching grant initiative, and four additional school districts are currently in the process of receiving a grant. The department reported the North Dakota STEM Network has been established, and a contract was created with a management company called Praxis Strategy Group to handle the day-to-day business of the STEM Network. The department reported the STEM Infusion program has worked with 23 school districts and 1,650 students on many STEM-related projects with a focus on recruitment and engagement of students into STEM fields.

INDUSTRIAL COMMISSION

Abandoned Oil and Gas Well Plugging and Site Reclamation Fund

Pursuant to Section 38-08-04.5, the Budget Section received a report on the balance of the abandoned oil and gas well plugging and site reclamation fund and expenditures. The Industrial Commission reported as of May 31, 2014, the balance of the abandoned oil and gas well plugging and site reclamation fund was $7,873,246, and it is anticipated the balance will be $12,861,310 by the end of the 2013-15 biennium. Revenues and expenditures of the fund are as follows:

Description	Actuals - July 2013 Through May 2014	Estimates - June 2014 Through June 2015
Beginning balance	$2,307,909	$7,873,246
Revenue	5,588,649	5,678,451
Expenditures	(23,312)	(690,387)
Ending balance	$7,873,246	$12,861,310

NORTH DAKOTA OUTDOOR HERITAGE ADVISORY BOARD

Activities to Date

Pursuant to Section 54-17.8-07, the North Dakota Outdoor Heritage Advisory Board reported to the Budget Section a summary of the board's activities to date. In September 2014, the North Dakota Outdoor Heritage Advisory Board reported the Governor appointed the 12 voting members and 4 nonvoting members of the North Dakota Outdoor Heritage Board, and the board established dates for the five rounds of applications during the 2013-15 biennium which include: December 2, 2013; April 1, 2014; August 1, 2014; November 3, 2014; and April 1, 2015. The board reported the Industrial Commission has awarded funds of $14.1 million to date, and these funds will be added with other sources of funding to provide projects totaling $73.3 million. The board reported the timing of the distribution of funds varies for each project, and some projects will receive the funds within the next year and other projects will receive funds over a 10-year period.

THREE AFFILIATED TRIBES

Investment of Oil and Gas Tax Receipts

Pursuant to Section 57-51.2-02, the Three Affiliated Tribes reported to the Budget Section fees, expenses, and charges the tribe imposes on the oil industry and essential infrastructure projects completed by Three Affiliated Tribes using oil and gas tax receipts. The Three Affiliated Tribes reviewed infrastructure projects currently being constructed on the Fort Berthold Indian Reservation including the Elbowoods Health Center streets and housing project, various street and utilities projects, and road and sewer projects.

STATE FIRE MARSHAL

Fire Department Funding Report

Pursuant to Section 18-04-02, the State Fire Marshal reported to the Budget Section expenditures by certified fire departments, district funds received from the insurance tax distribution fund, and reserve fund balances. The State Fire Marshal reported a certification packet was mailed in August 2014 to each fire service within the state, and 90 reports have been received and the State Fire Marshal anticipates receiving the remaining 240 reports by October 2014. The State Fire Marshal reported of the 90 reports that have been received, insurance tax distribution funds of $3.2 million were received in 2013 and $2.4 million of the funds have been spent to date.

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. A summary of the proposed use and distribution plan for the block grant will be provided by the Department of Commerce as part of the agency's appropriations hearing during the 2015 legislative session. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2015 legislative session.

Recommendation

The Budget Section recommends House Concurrent Resolution No. 3001 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 64th Legislative Assembly through September 30, 2017.

FEDERAL FUNDS

The Budget Section reviewed a report from the Legislative Council on federal funds anticipated to be received by state agencies and institutions for the bienniums ending June 30, 2015, and June 30, 2017. The report indicated agencies estimate $3.4 billion of federal funds will be received during the 2013-15 biennium, $231.1 million less than appropriated. Agencies estimate $3.45 billion of federal funds will be received for the 2015-17 biennium, $316.7 million more than is estimated to be received during the 2013-15 biennium.

The Budget Section reviewed a memorandum on the largest variances by agency for the 2013-15 biennium between federal funds appropriated and federal funds estimated to be received. The memorandum provides information regarding the major variances experienced by agencies during the 2013-15 biennium relating to federal funds appropriated and federal funds estimated to be received and the major variances estimated for the 2015-17 biennium compared to the 2013-15 biennium.

LEGISLATIVE COUNCIL STAFF REPORTS

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

- Budget Section duties and responsibilities for the 2013-15 Biennium. The report provides information detailing the duties and responsibilities of the Budget Section for the 2013-14 interim.
- 63rd Legislative Assembly Legislative Changes to the Governor's Recommended Appropriations for the 2013-15 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.
- 63rd Legislative Assembly State Budget Actions for the 2013-15 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.
- 63rd Legislative Assembly Budget Status Report for the 2013-15 Biennium. The report provides information on the status of the general fund and estimated June 30, 2015, ending balance, legislative changes to general fund revenues, and legislative appropriation changes to the executive recommendation.
- 2013-15 Biennium Report on Compliance With Legislative Intent. The report provides the current status of major budget changes and initiatives approved by the 2013 Legislative Assembly for various agencies. The report contains information regarding the status of major state trust funds.
- Three Affiliated Tribes - Oil and Gas Agreement and Oil Tax Allocations Report. The report explains the changes to the agreement pursuant to 2013 House Bill No. 1198. The report explains the result of the 2013 Legislative Assembly change to increase the allocation of oil and gas gross production tax collections to the Three Affiliated Tribes has increased the revenues for the Three Affiliated Tribes by an estimated $24.7 million for the first six months of the biennium with a corresponding reduction to the state's share.
- 2013 and 2014 North Dakota Finance Facts. The annual pocket brochure contains information on economic statistics, the state budget, K-12 education, higher education, human services, corrections, economic development, and transportation.

OTHER REPORTS

The Budget Section received other reports, including:

- State Historical Society - Information regarding an update on the status of the Lawrence Welk homestead property (December 2013).
- Department of Commerce - Information regarding an update on grants awarded to child care facilities pursuant to Section 14 of 2013 Senate Bill No. 2014. The Budget Section learned the Department of Commerce committed 100 percent of the $2.6 million appropriated by the 2013 Legislative Assembly to 22 projects across the state (December 2013).
- Department of Commerce - Information regarding an update on grants awarded to homeless shelters pursuant to Section 13 of 2013 Senate Bill No. 2014 (December 2013).
- Department of Commerce - Information regarding an update on the tribal college grants pursuant to 2013 Senate Bill No. 2218. The department reported the grants are available to the state's five tribal colleges for creation or enhancement of programs and courses of study to prepare students, and the maximum grant amount was $2 million per institution for the 2013-15 biennium. The department reported the $5 million appropriated in Senate Bill No. 2218 has been awarded, and through September 2014, $2.6 million has been disbursed (September 2014).
- Indian Affairs Commission - Update on the tribal college grants pursuant to Senate Bill No. 2218. The commission reported the grant amounts awarded to each of the five tribal colleges include Turtle Mountain Community College - $1,248,100; Fort Berthold Community College - $165,000; Cankdeska Cikana Community College - $1,250,069; Sitting Bull College - $804,474; and United Tribes Technical College - $1,532,357. The commission reported accomplishments resulting from the funds provided from the grant program include: allowing colleges to add new associate degrees, certificates, and training programs; adding more workshop and short-term training opportunities for students; purchasing new equipment, including a welding simulator; a semi-truck and trailer, a truck driving simulator, and truck driving simulator expanded training module; and renovating the trade center at Sitting Bull College and the community business development center at Cankdeska Cikana Community College (September 2014).
- Department of Trust Lands - Information regarding an update on grants awarded from the oil and gas impact grant fund to oil-impacted political subdivisions for the 2013-15 biennium to date. The Budget Section learned through November 30, 2013, $107.9 million has been awarded to political subdivisions for city infrastructure, dust control, sheriff's departments, K-12 education, airports, fire districts, and emergency medical services and $5 million in grants to law enforcement have been awarded from the strategic investment and improvements fund. The Budget Section learned $31.8 million has been designated for fiscal year 2015 (December 2013).
- Department of Human Services - Information regarding Medicaid Expansion. The Budget Section learned the federal government is paying 100 percent of Medicaid Expansion-related claims for the first three calendar years of the expansion, the percentage will decrease to 90 percent by 2020, and the Medicaid Expansion-related enrollment was approximately 9,500 individuals (June 2014). The Budget Section learned Medicaid Expansion-related expenditures through July 2014 totaled $59.1 million (September 2014).
- Department of Human Services - Information regarding the eligibility systems modernization project. The Budget Section learned the project is to replace the current legacy eligibility determination systems with a fully integrated system that includes ACA requirements, and the system replacement includes Medicaid, children's health insurance program (CHIP), temporary assistance for needy families (TANF), supplemental nutrition assistance program (SNAP), child care assistance program, and low-income home energy assistance program. The Department of Human Services reported the Centers for Medicare and Medicaid Services (CMS) provides enhanced federal financial participation of 90 percent for Medicaid requirements of the system replacement, and the enhanced federal financial participation is available through December 31, 2015. The Department of Human Services reported ACA requirements had to be in place by October 1, 2013 and because of the complexity of the ACA requirements and the limited resources, DHS issued an RFP for additional project assistance in order to accelerate the project's schedule and maximize the availability of federal funds for the project (September 2014).
- Department of Human Services - Information on the status of programs of DHS. The Budget Section learned the number of Medicaid eligibles increased from 65,954 in July 2013 to 79,031 in June 2014. Medicaid Expansion enrollment was 10,611 as of June 2014. The Department of Human Services provided information on the number of eligibles as follows (September 2014):

Comparison of Eligibles	Medicaid Eligibles		
	July 2013	June 2014	Variance
Under age 21	36,918	37,769	851
Over age 65 (aged)	7,815	7,828	13
Disabled	10,404	10,340	(64)
Adults	10,817	12,483	1,666
Medicaid Expansion		10,611	10,611
Total	65,954	79,031	13,077

- North Dakota Hospital Association - Information on the effectiveness of the program to assist hospitals verify personal and health insurance information of patients. The Budget Section learned of the $700,000 grant provided for the program in 2013 House Bill No. 1015, expenditures to date total $153,570 and the North Dakota Hospital Association entered an agreement with Emdeon Business Services, LLC, for a software program to provide hospitals with a source to verify personal data and health insurance data (September 2014).

- Department of Public Instruction - Information on the purpose and status of federal grant applications. The Department of Public Instruction provided information on three federal grant opportunities which would promote school and student safety and mental health (September 2014).

- Information Technology Department - Information regarding the Secretary of State's data processing system project. They reported that the Secretary of State's appropriation is not sufficient to complete the project and that ITD plans to borrow between $850,000 and $950,000 for the project to allow continued project development for the remainder of the 2013-15 biennium.

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, the Budget Section considered 24 agency requests that were authorized by the Emergency Commission. All requests were approved. Approved requests increased spending authority by $47,326,725, made line item transfers of $1,050,000, authorized expenditures from the state contingencies appropriation of $152,500, and added 6.5 FTE positions. The following is a list of agency requests approved from June 18, 2013, through September 24, 2014:

Adjutant General

- June 18, 2013, to authorize the expenditure of $13,903,595 from the state disaster relief fund for expenses associated with the 2009 flood disaster. To use a portion of the funding for volunteer disaster response coordination ($400,000) and a disaster coordination contract ($1,500,000).

- June 18, 2013, to continue the authorization to expend $6,277,000 from the state disaster relief fund for flood relief, disaster mitigation assistance, and road grade raising grants to political subdivisions and to continue the authorization to expend $6,238,000 from the state disaster relief fund for flood-impacted housing rehabilitation.

- June 18, 2013, to increase federal funds spending authority by $4,493,625 from the Federal Emergency Management Agency (FEMA) relating to the 2013 Red River flood preparation activities. To expend $400,000 during the 2011-13 biennium and to expend $4,093,625 during the 2013-15 biennium.

- June 18, 2013, to increase federal funds spending authority by $6,641,250 from FEMA and to accept and expend loan proceeds of $914,375 from the Bank of North Dakota for disaster expenses related to the state receiving above normal precipitation during spring 2013. To expend $397,500 of federal funds during the 2011-13 biennium and to expend $6,243,750 of federal funds during the 2013-15 biennium. To expend $132,500 of Bank funds during the 2011-13 biennium and to expend $781,875 of Bank funds during the 2013-15 biennium.

Aeronautics Commission

- June 25, 2014, to transfer $300,000 from the grants line item to the operating expenses line item to update the commission's economic impact aviation study.

Department of Agriculture

- June 25, 2014, to increase federal funds spending authority by $400,000 in the grants line item. The funding is for the United States Department of Agriculture specialty crop block grant program, which promotes specialty crops in the state.

Attorney General

- September 25, 2013, to transfer $200,000 from the operating expenses line item to the salaries and wages line item for temporary salary increases for employees impacted by energy development.

- September 25, 2013, to authorize an additional .5 FTE position for assistance with prosecutions in oil-impacted counties.
- March 12, 2014, to authorize $68,500 from the state contingencies appropriation for litigation fees relating to legal cases.
- March 12, 2014, to increase federal funds spending authority by $100,000 for salaries and wages ($66,000) and operating expenses ($34,000) and to authorize 1 FTE position relating to a prosecutor.
- June 25, 2014, to increase federal funds spending authority by $346,364 for operating expenses ($46,744) and capital assets ($299,620) related to drug testing equipment.
- June 25, 2014, to authorize $84,000 from the state contingencies appropriation for the litigation fees line item for expenses associated with legal cases and litigation related to section line litigation ($35,000) and tobacco policy enforcement litigation ($49,000).

State Auditor's office

- March 12, 2014, to increase federal funds spending authority by $102,750 for salaries and wages ($86,500) and operating expenses ($16,250) relating to a royalty auditor.

Game and Fish Department

- March 12, 2014, to increase special funds spending authority by $500,000 in the land habitat and deer depredation line item relating to a grant from the North Dakota outdoor heritage fund.
- March 12, 2014, to increase federal funds spending authority by $368,250 and to increase special funds spending authority by $122,750 from the game and fish fund for projects at the Garrison Dam National Fish Hatchery.

Department of Human Services

- December 11, 2013, to increase federal funds spending authority by $5,851,660 relating to the MMIS computer project.

Office of Management and Budget

- June 18, 2013, to transfer $400,000 from the salaries and wages line item to the capital assets line item. The transfer is for anticipated costs associated with the Capitol cafeteria remodeling project exceeding original legislative appropriations for the project. The original appropriation for the Capitol cafeteria remodeling project was $700,000 and the current cost estimate is between $1 million and $1.2 million.

Department of Parks and Recreation

- December 11, 2013, to increase special funds spending authority by $150,000 for trail reconstruction at Little Missouri State Park.
- March 12, 2014, to increase special funds spending authority by $129,000 in the natural resources line item relating to a grant from the North Dakota outdoor heritage fund for the agency's Natural Resource Stewardship project.
- March 12, 2014, to increase special funds spending authority by $112,000 relating to a grant from the North Dakota outdoor heritage fund for the agency's trail restoration and improvement project.
- March 12, 2014, to increase special funds spending authority by $130,000 of parks revenue for expenses relating to the operation of the marina at Lake Sakakawea.
- March 12, 2014, to increase special funds spending authority by $298,000, from $1,770,000 to $2,068,000, for the expansion of the following capital projects: Lewis and Clark State Park, campsite expansion $149,000; Fort Stevenson State Park, administrative office $95,000; and Lake Sakakawea State Park, campground $54,000.

Secretary of State

- September 24, 2014, to transfer $150,000 from the operating expenses line item to the salaries and wages line item for additional costs relating to overtime and temporary employees.

State Water Commission

- June 25, 2014, to authorize 5 new FTE positions within the Water Appropriations Division of the State Water Commission and to increase special funds spending authority from the resources trust fund by $546,106 in the water and atmospheric resources line item to meet the demand for water permits and required permit inspections.

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 Chairman of the Legislative Management 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 2013 Senate Bill No. 2340. That bill provided for a study of the sentencing alternatives to incarceration for first-time offenses that are nonviolent, excluding the distribution of drugs.

Commission members were Senators Ron Carlisle (Chairman), John Grabinger, and Margaret Sitte; Representatives Lawrence R. Klemin, William E. Kretschmar, and Marie Strinden; Governor's appointees Dan Donlin, Mark A. Friese, and Dr. Gary Rabe; Attorney General's designee Thomas L. Trenbeath; Chief Justice's appointees Surrogate Judge Mary Muehlen Maring and Justice Lisa McEvers; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Maggie D. Anderson; Attorney General's law enforcement officer appointees Paul D. Laney and Jason T. Olson; North Dakota State's Attorneys Association appointee Meredith Huseby Larson; 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 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

BACKGROUND

Department of Corrections and Rehabilitation

In 2013 the Legislative Assembly appropriated $180,915,389 from the general fund and $36,134,922 from other funds for the Department of Corrections and Rehabilitation for the 2013-15 biennium, which is an increase of approximately 13 percent over the 2011-13 biennium appropriation. The appropriation for the department provided for an increase of 20 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 814.29.

The appropriation included $26,002,845, a decrease of $1,600,000 from the 2011-13 biennium appropriation, for contract housing and transitional facilities for male inmates housed at the Missouri River Correctional Center, county jails, and private facilities. The 2013-15 appropriation to the department also included $8,966,204 to contract to house

female inmates at the Dakota Women's Correctional and Rehabilitation Center, which is an increase of $507,521 from the 2011-13 biennium appropriation.

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 December 2013, the State Penitentiary housed 696 male inmates. The James River Correctional Center in Jamestown is classified as a medium security housing facility and, as of the end of December 2013, housed 419 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 December 2013, the Missouri River Correctional Center housed 142 inmates. The division offers addiction treatment services, a sex 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.

Parole and Probation Division

The department has 15 offices across the state staffed by parole and probation officers who manage offenders on parole or supervised probation and complete presentence investigations when ordered by courts. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services.

The division manages the Tompkins Rehabilitation and Corrections Center; operates or participates in drug court programs, global positioning monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sex offenders; and contracts for services with halfway houses and the Bismarck Transition Center to provide transition services.

The Tompkins Rehabilitation and Corrections Center is a Department of Corrections and Rehabilitation-funded program at the State Hospital. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males. As of the end of December 2013, the center housed a total of 66 inmates.

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 70-bed minimum security unit, a 40-bed medium security unit, and a 16-bed orientation unit. In May 2006, a five-bed high security unit was added to the facility. As of the end of December 2013, the Dakota Women's Correctional and Rehabilitation Center housed 120 state inmates.

Division of Juvenile Services/Community 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; sex 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.

Penalties for Nonviolent Crimes

Mandatory Minimum Sentences in North Dakota

During the 1980s and early 1990s, many states, including North Dakota, enacted laws providing for mandatory minimum sentences for certain offenses. Mandatory minimum sentencing laws require a judge to impose a sentence of at least a specified length if certain criteria are met. The proponents of mandatory minimum sentencing laws contended the certainty and severity of the mandatory minimum sentences would reduce crime by deterring individuals from committing crimes and keeping criminals incarcerated longer. However, critics of the laws argued the

requirements unduly removed discretion from judges and would ultimately result in significant increases in the number of individuals incarcerated.

In 1983 the Legislative Assembly enacted Senate Bill No. 2373, which established mandatory minimum terms of imprisonment for offenders with multiple driving while under the influence offenses. The Legislative Assembly in 2013 House Bill No. 1302 increased the mandatory minimum sentences for driving under the influence offenses.

In 1993 the Legislative Assembly enacted House Bill No. 1062, which established mandatory minimum terms of imprisonment for the manufacture, delivery, or possession with the intent to deliver certain controlled substances. The bill amended Section 19-03.1-23 to provide specified minimum sentencing requirements based upon the classification of the controlled substance and whether the offender had previous offenses. The bill also established mandatory minimum sentences if the violation occurred within 1,000 feet of a school and if the offender was over the age of 21 and used a minor in the commission of the crime. Additionally, the bill amended Section 12.1-32-02.1 to impose mandatory sentences if the offender possessed a dangerous weapon or firearm while in the course of committing the offense. The bill created Section 19-03.1-23.2, which prohibits a court from deferring imposition of a sentence and from suspending a mandatory term unless the court finds the offense was the defendant's first violation and extenuating or mitigating circumstances exist to justify the suspension.

Subsequent Legislative Assemblies, including the 2005 Legislative Assembly, have established minimum mandatory sentences for sex offenders and imposed requirements with respect to the service of sentences.

Section 12.1-32-09.1, which was enacted by the Legislative Assembly in 1995 and amended in 1997, provides an individual convicted of a crime that classifies the individual as a violent offender and who is sentenced to imprisonment is not eligible for release from confinement on any basis until 85 percent of the sentence imposed by the court has been served or the sentence is commuted.

Section 12.1-20-03.1, which was enacted by the Legislative Assembly in 1997 and amended in 2005, prohibits a court from deferring imposition of a sentence of an individual convicted of the continuous sexual abuse of a child. In 2005 the Legislative Assembly in House Bill No. 1313 further provided if, as a result of injuries sustained during the course of the offense classified as gross sexual imposition, the victim dies, the offense is a Class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

In 2005 the Legislative Assembly enacted Senate Bill No. 2341, which provided for the establishment of a pilot project in Pembina, Walsh, and Grand Forks Counties effective three months from the date of receipt of a federal grant for meth treatment applied for by the Department of Human Services. The bill provided when an individual located in Walsh, Pembina, or Grand Forks County pled guilty or was found guilty of a felony violation of Section 19-03.1-23(6) and that individual had not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense, the court would be required to impose a period of probation of not less than 18 months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence. The bill further provided upon a plea or finding of guilt of the individual, the court would be required to order a presentence investigation, including a drug and alcohol evaluation conducted by a licensed addiction counselor. If the licensed addiction counselor recommended treatment, the court was required to order the individual to participate in an addiction program licensed by the Department of Human Services as a condition of the probation. The court was then required to commit the individual to treatment through a licensed addiction program for up to 18 months until the individual would be determined suitable for discharge by the court. In 2007 the Legislative Assembly expanded the assessment and treatment program statewide in House Bill No. 1015.

Incarceration Rates and Mandatory Sentences

According to the 2013 Department of Corrections and Rehabilitation inmate population report, the number of inmates incarcerated for minimum mandatory sentences has increased from 92 at the end of 2008 to 99 at the end of 2013. The population of inmates incarcerated under the 85 percent "truth-in-sentencing" law increased from 234 at the end of 2008 to 308 at the end of 2013. The following table compiled by the department summarizes the inmate population on December 31, 2013, compared with the same time during the previous five calendar years:

Inmate Count on December 31, 2013 (Minimum Mandatory)						
Offense	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
DUI/APC	19	15	22	21	24	10
Driving under suspension	2	0	1	0	0	0
Drug offenses (not alcohol)	22	28	31	35	37	31
Reckless endangerment	2	0	2	2	0	0
Assault	8	9	11	15	11	9
Burglary with weapon	0	0	0	0	0	0

Inmate Count on December 31, 2013 (Minimum Mandatory)						
Offense	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
Felonious restraint	0	0	0	0	0	0
Kidnapping	1	1	1	1	1	1
Sex offense	3	5	8	9	8	10
Terrorizing	8	7	5	8	10	14
Robbery	12	9	7	6	5	9
Negligent homicide	0	0	2	2	1	1
Manslaughter	1	1	1	1	0	0
Murder	12	11	11	13	14	14
Felon in possession of a firearm	0	1	0	1	0	0
Offender registration violation	2	2	3	3	3	0
Total	92	89	105	117	114	99

Inmate Count on December 31 (85% Truth-In-Sentencing)						
	2008	**2009**	**2010**	**2011**	**2012**	**2013**
Number of inmates having 85% TIS	234	233	265	274	280	308
Average sentence in months	91	97	96	99	111	101

Fiscal Year Admissions of 85% Truth-in-sentencing Inmates						
	Fiscal Year 2008	**Fiscal Year 2009**	**Fiscal Year 2010**	**Fiscal Year 2011**	**Fiscal Year 2012**	**Fiscal Year 2013**
Number of inmates having 85% TIS	77	80	85	96	85	112
Average sentence in months	49.66	45.86	45.31	43.59	55.32	39.25

2011-12 Interim Study Recommendations and 2013 Legislation

During the 2011-12 interim, the commission received reports from the Department of Corrections and Rehabilitation and the Department of Human Services regarding programs and initiatives implemented and administered by those entities. In addition, the commission examined issues related to the penalties and the monetary thresholds for determining whether a theft offense is a felony. The commission also studied driving under suspension offenses and penalties and the imposition of fees upon offenders by the courts.

2013-15 Budget Recommendation

The commission recommended 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 2013 Legislative Assembly increased funding for the Robinson Recovery Center by $296,000 for the 2013-15 biennium.

Temporary Restricted License Legislation

The commission recommended and the Legislative Assembly enacted 2013 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 the defendant has obtained reinstatement of the operator's license within 60 days after the date of the offense.

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.

Prison Populations and Sentencing

Representatives of the Department of Corrections and Rehabilitation presented the commission with information regarding changes and trends in prison populations and sentencing data. Since 1992, the population of the state has increased approximately 13 percent. However, over that same period, the annual number of inmate admissions for the department has tripled. Under 2013 Senate Bill 2015, the department was authorized to refuse to admit inmates sentenced to the physical custody of the department when the admission of inmates will exceed the maximum operational capacity of the penitentiary and its affiliated facilities and result in the department exceeding its authorized legislative appropriation for contracting for housing inmates in other correctional facilities. Representatives of the

department indicated that although most of the state prison facilities are at or near capacity, the department has not had to implement the prison management plan to address a situation in which a prison bed is not available.

Representatives of the department presented the commission with data analyzing sentences imposed throughout the eight judicial districts and data relating to admissions by county. The data indicated most offenders under the supervision of the department have been sentenced to terms of less than three years. For the year 2013, the analysis indicated the number of admissions from Burleigh County exceeded the total number of admissions from the next two highest counties combined--Grand Forks and Cass Counties. Although it was indicated additional analysis would be necessary, it was suggested prosecutorial decisions and sentencing practices were likely explanations for the significantly higher number of admissions from Burleigh County.

Recidivism Reduction

The commission received reports from representatives of the Department of Corrections and Rehabilitation relating to efforts to reduce recidivism. The department underwent an evaluation of its programs from outside observers to examine the capacity and content of the programs and how closely the programs meet principles of effective intervention. The purpose of the evaluation was to measure whether the programs have the capability to deliver evidence-based interventions and services for offenders and to evaluate the extent to which the programs meet the principles of risk, need, responsivity, and treatment. The results of the evaluation indicated the 3 male prison facilities were highly effective in adhering to risk responsivity principles and the programs were within the top 18 percent of correctional programs audited.

The department has developed programs to address conflict resolution, alternatives to violence in relationships, sex offender treatment, and coping skills. In addition, the department is equipped to provide individual interventions and provides cognitive behavioral interventions for substance abuse. Beyond the programs for incarcerated offenders, the department has implemented evidence-based programs to reduce recidivism for offenders on community supervision. The department has trained all probation officers in core correctional practices designed to provide more effective supervision. Those practices include developing and implementing an actuarial assessment with a structured case plan, providing structured interventions based on risk and need, exercising effective reinforcement and use of authority, helping build relationship skills and problem-solving skills, and implementing anti-criminal modeling and cognitive restructuring.

Representatives of the department provided testimony indicating recidivism may be reduced by strengthening probation and alternative sentencing options. Evidence-based practices indicate low-risk offenders on probation are less likely to reoffend when supervised probation is limited in length and the supervision is focused on positive reinforcement programs while continuing to allow for quick and effective sanctions for probation violations. To address recidivism, representatives of the department recommended several probation and sentencing options to:

1. Enhance the ability of probation officers to impose immediate sanctions in the form of a 48-hour jail hold for probation violations;
2. Allow early discharge from probation for compliance with the terms of probation;
3. Allow for the conversion of restitution orders to civil judgments to allow discharge and repayment of restitution after discharge;
4. Reduce the maximum length of probation for misdemeanors and reduce the maximum length of probation for felonies, except for crimes of violence and sex offenses;
5. Eliminate the requirement that any portion of a suspended felony sentence must be on supervised probation, unless otherwise required by law; and
6. Create a state reinvestment fund to assist local detention centers implement evidence-based practices and treatment programs.

The commission considered a bill draft to reduce the length of probation for most felony offenses, except sex offenses and violent crimes, from five years to three years; reduce the length of probation for misdemeanor offenses from two years to 360 days; provide the maximum length of probation extension for violating the conditions of probation is 360 days; allow a court to authorize the Department of Corrections and Rehabilitation to terminate supervision after 18 months if the offender has complied with the conditions of probation; and allow a period of incarceration not to exceed 48 hours as an alternative to a revocation of probation.

Concerns were expressed by some members of the commission with respect to the provision of the bill draft which authorizes a 48-hour period of incarceration as an alternative to revocation. The concerns generally involved whether the period of incarceration would violate due process rights of probationers and whether granting the decision to incarcerate to someone other than a judge would be an unlawful delegation of authority. However, proponents of the

proposals indicated that because the period of incarceration in lieu of revocation would be a condition of probation imposed by the court, there would be no constitutional concerns and the process would be similar to that already in place for parole violators. In addition, it was argued, revocations would be reduced and the court system as well as probationers would benefit. To address concerns regarding unlimited use of the 48-hour hold provisions, proponents of the bill draft proposed limiting 48-hour holds for an individual to five times in a 12-month period.

Representatives of the Department of Corrections and Rehabilitation provided testimony relating to restitution orders and the impact on department resources related to probation revocations due to failure to fulfill probation conditions related to restitution. Because a significant number of probation revocations are due to failure to fully comply with restitution orders, department officials suggested probation officers often are forced to act as collection agents. A representative of the department suggested a potential solution could be the creation of crime victim compensation fund for property crimes. However, members of the commission expressed concerns regarding the appearance of such a fund placing the burden for reimbursement of criminal acts on the taxpayers rather than the offenders.

The commission received information from the State Court Administrator regarding the amount of restitution assessed and collected. On February 20, 2014, the court system had an accounts receivable balance of ordered restitution of $25,676,201. However, that amount did not include amounts assessed in Burleigh and Grand Forks Counties and included partial amounts assessed in Cass and Ward Counties. The report indicated uncollectable restitution was estimated to be $17,372,569.

The commission considered a resolution draft to provide for a Legislative Management study of restitution for criminal acts. Commission members generally agreed that a full study of issues related to restitution would be helpful in exploring potential solutions to the concerns expressed with respect to the impact of restitution orders.

Local Evidence-Based Programs

Although an offender may be incarcerated in a local jail or detention center for up to one year, an offender in such a facility has no access to the recidivism reduction and treatment services provided by the Department of Corrections and Rehabilitation. Representatives of the department presented the commission information regarding opportunities to develop partnerships with local detention centers for the implementation of evidence-based programs and services. One option presented for consideration was the creation of a state reinvestment fund designed to allow counties to apply for funding to support local programs.

The commission also received information regarding efforts by the department to establish a pilot program to work with the Burleigh and Cass County Jails to implement programs and services at the jails which are designed to reduce recidivism. It was suggested demonstrated success with the pilot program could be the basis for expansion of the efforts to other local jails and detention facilities. A representative of the department informed the commission that the department had applied for a federal grant to assist in the effort to expand recidivism reduction programs to local jails and detention centers.

Department of Human Services

The commission received reports regarding programs under the supervision of the Department of Human Services, including programs undertaken in cooperation with the Department of Corrections and Rehabilitation and various contract programs.

Robinson Recovery Center

The department continues to contract with the Robinson Recovery Center for residential treatment services. The commission received a report indicating the Robinson Recovery Center utilized the additional funding provided by the 2013 Legislative Assembly to increase the number of beds available to female clients from 10 to 15, and that the additional beds were filled within a week after completion of the renovation allowing for the additional beds. The center had an occupancy rate of approximately 90 percent during 2013 and a representative of the center indicated a similar occupancy rate is expected to be maintained in the foreseeable future. Although a majority of the admissions to the center continue to be from the human service region including Fargo, a growing number of admissions are coming from the western portion of the state. According to the report, almost 50 percent of the clients admitted were addicted to meth. The center's rate of successful completion of the program increased from approximately 35 percent in fiscal year 2012 to 39 percent in the 12 months prior to August 2013. It was reported the majority of those not successfully completing treatment either left against professional advice or were discharged by the facility for behavioral or compliance issues. The report indicated an increasing number of individuals in the state are in need of long-term, residential treatment for addiction to drugs and alcohol. In addition, addiction counselors are seeing an increase in the use of meth and heroin. A representative of the center informed the commission there is a severe lack of residential treatment services for women with children. Although the entity that operates the center also operates a residential program for women with children, that program receives no funding from the state.

Tompkins Rehabilitation and Corrections Center

The Tompkins Rehabilitation and Corrections Center is located at the State Hospital and operated by the Department of Human Services in collaboration with the Department of Corrections and Rehabilitation. According to a report from a representative of the center, the center has consistently ranked in the top 15 percent of similar programs nationally. The center provides a cognitive behavioral treatment approach utilizing cognitive restructuring groups to reduce risks to reoffend. The report indicated the percentage of individuals who successfully complete treatment and who do not reoffend within six months is more than double the national average. The success of the program has been attributed to the length of the program. In addition to the 100 days of residential treatment, aftercare treatment extends the care to a total of six months to a year.

Southeast Human Service Center

The commission received a report regarding the services provided by the Southeast Human Service Center, including contract services. The center has collaborated with the Cass County Jail to provide case management and mental health services for incarcerated individuals. In addition to the postbooking services through the jail program, the center has participated with law enforcement and private mental health providers to provide training to law enforcement officers to assist the law enforcement officers in identifying individuals in need of community services and helping those individuals with obtaining treatment with the purpose of addressing mental health issues before incarceration. The representative of the center also reported regarding the implementation of an integrated dual-diagnosis treatment multidisciplinary team structure designed to reduce institutionalization, reduce violence and suicide, and improve physical health, function, and family relationships of participants. The measured outcomes over the first 48 months of that initiative indicated a 29 percent decrease in emergency room admissions, a 40 percent decrease in crisis bed days, a 70 percent decrease in long-term hospitalization, an 87 percent decrease in respite care bed days, a 90 percent decrease in acute psychiatric hospital days, and a 98 percent decrease in days incarcerated.

The commission received testimony from representatives of private mental health and addiction treatment services providers in the Fargo area, including a report regarding the Region 5 mobile crisis team project. The Southeast Human Service Center collaborates with the private provider to address urgent mental health needs in the region through on-call staff. During the first eight months of the program, the team received an average of over 12 calls per month. According to the report, 97 of the 99 calls were resolved without the need to access alternative placements or higher levels of care. Although the cost of the crisis team is approximately $10,000 per month, it was stated the estimated cost of psychiatric hospitalization of 50 percent of the individuals seeking help would likely be nearly three times that amount.

Contract Services

The commission received reports from representatives of the Department of Human Services regarding services for which the department contracts. Included within the reports were lists of each program or service provided by the department or a contractor and an inventory of the services provided. Representatives of the department also updated the commission regarding ongoing stakeholder meetings conducted by the department which were intended to determine the needs throughout the various human service regions. Among the most common needs identified were additional addiction treatment services, adolescent residential options, crisis and transitional living, and housing for individuals who are chronically homeless, sex offenders, or felons.

Addiction Counselor Shortage

The commission received testimony from private service providers and representatives of the Department of Human Services regarding the difficulty in hiring and retaining addiction counselors. The commission was informed wages for addiction counselors are generally lower than other health professionals. In addition, the number of hours of supervised training for licensing of an addiction counselor in North Dakota is higher than in Montana and Minnesota. A representative of the Board of Addiction Counseling Examiners stated the shortage of addiction counselors is a nationwide problem and is expected to worsen. Although 1,400 hours of supervised training are required by the board, 85 percent of the states, including South Dakota, require more than 2,000 hours of supervised training.

A representative of the department informed the commission the regional human service centers had approximately a dozen open addiction counselor positions, a majority of which were in the western portion of the state. The department has implemented numerous recruitment and retention strategies to address the shortage. Among those strategies were providing recruitment bonuses, paying moving expenses for new hires, assisting in the licensure and reciprocity process, providing retention bonuses, reviewing compensation and classifications for addiction counselor positions, and paying for training through a tuition reimbursement program. In addition, the department began to utilize an addiction technician classification to allow new hires to complete the required training hours while working toward initial licensure.

Commission Tours

The commission toured several facilities operated by the Department of Human Services and by vendors under contract with the department, including the Tompkins Rehabilitation and Corrections Center and the Robinson Recovery Center and several crisis and transitional living facilities in Fargo and Jamestown.

Judicial Branch

The commission received reports and information regarding various Judicial Branch programs and issues of concern to representatives of the court system.

Minority Justice Implementation Committee

The commission received a report regarding evidence-based sentencing from a representative of the Supreme Court Minority Justice Implementation Committee. The committee was working to implement recommendations made by the Supreme Court's Race and Bias Commission, including initiating evidence-based sentencing to address implicit bias based on minority status. Although in reviewing statistics regarding race and sentencing in the state, regional variations were noted, bias was not found to exist on a statewide basis. Tools used in other levels of the criminal justice process, which can be implemented in the sentencing process to assist judges in crafting better sentences that promote objectivity, provide cost-savings, reduce recidivism, and deliver an appropriate level of services, include risk and needs assessment tools, actuarial tools that measure risk, and clinical tools that measure criminogenic needs.

Drug Courts

The commission received a report regarding the challenges faced by drug courts and the individuals participating in the drug court process. The shortage of addiction counselors has become a concern with respect to the operation and potential expansion of both juvenile and adult drug courts. It was reported that standards for effective operation of drug courts require evidence-based practices. However, not all drug courts in the state have had access to services utilizing evidence-based practices.

With respect to juvenile drug courts, several additional challenges were identified. Those challenges include the lack of adolescent inpatient and crisis stabilization beds, a lack of affordable and accessible treatment options, and the limited availability of psychiatric services for adolescents. With respect to adult drug courts, the challenges identified include difficulty in obtaining or maintaining appropriate housing, the cost of chemical dependency evaluations, the cost of defense counsel for participants, insurance carriers not covering the cost of treatment beyond the traditional 24 day programs, and the impact of the changes in driving under the influence laws enacted by the 2013 Legislative Assembly--the required mandatory jail time reduces the incentive to participate in drug court.

Sentencing Practices

The commission received reports from district court judges regarding sentencing practices. Although it was stated the goal of a judge is to make the best use of resources to optimize public safety, one judge testified additional resources are necessary to allow for assessment of individuals as they are detained and to implement a plan while eliminating waiting times for evaluations and treatment. In addition, judges stated additional resources for treatment services would be beneficial in tailoring sentences to the needs of offenders. It was argued judges must have the flexibility to adjust programs and individualize dispositions. In individualizing dispositions, judges will review the nature of the offense and the background and criminal record of the defendant, recommendations from the prosecution and defense, the statement of the defendant at sentencing, and a crime victim impact statement. A judge from the south central judicial district informed the commission judges in Burleigh County order a greater number of presentence investigations than judges in Cass County. After reviewing Burleigh County case files, the judge reported that judges rarely sentenced a defendant to a period of incarceration longer than that recommended by the presentence report.

HOPE Program

The commission received a report from a district judge regarding Hawaii's Opportunity Probation with Enforcement (HOPE) program. The HOPE program is designed to impose an immediate sanction for probation or parole violations. Under the program, an offender taken into custody for an alleged violation must see the judge within 24 to 48 hours. Sanctions for a violation generally range from two to seven days in jail, which may be served on weekends or holidays or with work release to accommodate probationers who are employed. The program is intended to keep an offender employed and out of the State Penitentiary while holding the offender accountable for any violation of a parole or probation condition.

Mandatory Transfers from Juvenile to Adult Court

The commission received information from the State Court Administrator regarding mandatory transfers of juveniles from juvenile court to adult court under Section 27-20-34. Under that section, a child 14 years old or older is transferred to adult court for 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, except for the

manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound; or the gratuitous delivery of a controlled substance not a narcotic drug or meth which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use. The commission was informed that between 2009 and 2013, there were 41 cases in which jurisdiction was mandatorily transferred to adult court. From 2011 through 2013, there were 21 mandatory transfers, 9 of which involved drug offenses. Of those 21 cases, 7 of the juveniles were not sentenced to any jail time and 6 were placed under the custody of the Department of Corrections and Rehabilitation.

The commission considered a bill draft to eliminate the mandatory transfer of a juvenile to adult court for the offenses related to manufacture, delivery, or possession of controlled substances. Proponents of the bill draft pointed out the proposal only removes the mandatory transfer requirement, and judges will continue to maintain authority to transfer a juvenile to adult court if the judge believes the transfer is necessary and warranted.

Other Reports

Community Service Programs

The commission received reports regarding the operation and activities of 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. The 2011 Legislative Assembly, through Senate Bill No. 2275, appropriated $375,000 from the general fund for the biennium to support the community service programs. In 2013 the Legislative Assembly included within the appropriation for the Office of Management and Budget $375,000 in funding for support of community service 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.

A representative of community service programs informed the commission that 2,638 offenders performed community service in 2013, with 41 percent of the offenders performing community service in Fargo. In 2013 a total of 74,053 hours of community service were completed with a noncash value to the worksites of $592,383. The report concluded that the hours of community service performed in 2013 saved 9,256 days of prison or jail service, which at an estimated cost of $65 per day provided a savings of $601,680.

Mentorship Programs

The commission received a report from a representative of Big Brothers Big Sisters of Bismarck-Mandan regarding mentorship programs and the efforts of Big Brothers Big Sisters to mentor children of incarcerated parents. The committee was informed the program received a 3-year grant from the United States Department of Justice to mentor children of incarcerated parents, and by the end of the grant period, over 50 percent of the children served by the program had a parent who was incarcerated.

The commission received a report from a representative of the Heart River Bridges of Hope Reentry Ministry which recruits volunteers, primarily from churches, to create teams of mentors to work with youth at the Youth Correctional Center. The primary goal of the program is to help youth transition to a faith community upon discharge from the center, with the added goals of reducing recidivism and providing a positive social network for the youth.

Cass County Jail Initiative

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

The commission requested the Cass County Sheriff to provide the commission with information regarding the potential expansion of the program to other counties. The commission was informed the cost of starting similar programs should be reduced because there is a model to follow. However, the key to implementing such a program is dependent upon the participation of law enforcement, the courts, prosecutors, and defense attorneys and upon the availability of community services and qualified professionals.

The Pew Charitable Trusts

The commission received a report from a representative of The Pew Charitable Trusts regarding sentencing and corrections policies. In addition, the commission was provided information regarding The Pew Charitable Trusts public safety performance project and the initiatives undertaken in other states, including South Dakota, to improve public safety, hold offenders accountable, and control corrections costs. The initiative in South Dakota resulted in legislation that is expected to significantly reduce the projected growth of prison populations in the state. The commission was informed the South Dakota initiative involved a bipartisan effort through all three branches of government. An initiative of that type generally lasts about one year during which data experts review all aspects of the criminal justice and correctional systems in the state and present an update to a bipartisan interbranch task force which then identifies priorities and develops policy solutions.

Mandatory Sentences and Sentencing Alternatives for First-Time Nonviolent Felony Offenses

Representatives of the Department of Corrections and Rehabilitation brought to the commission proposals to address penalties for offenses related to abuse and neglect of a child, possession of drug paraphernalia, and ingestion of a controlled substance.

Under Section 14-09-22, the crimes of abuse and neglect of a child are classified as Class C felonies unless the victim is under the age of six, in which case the offense is a Class B felony. Representatives of the department proposed splitting the offenses of abuse of a child and neglect of a child into separate statutory provisions and eliminating the Class B felony penalty for the offense of neglect of a child.

The commission considered a bill draft to implement the proposal to separate the offenses of abuse and neglect of a child. The proponents of the bill draft contended the proposal would clearly define the difference between the offenses and would clarify areas of confusion regarding requirements to register as an offender against children, which is not required for the offense of neglect of a child.

Representatives of the department testified there are a significant number of offenders who are incarcerated for the offenses of possession of drug paraphernalia and ingestion of a controlled substance. If an individual who has an addiction admits to having a relapse, a probation officer is faced with the decision of whether to arrest the individual who is under supervision simply because of the admission to having a relapse. It also was contended prosecutors have not used the ingestion statute responsibly and too many individuals on probation are being incarcerated for admitting to a relapse while not actually being found in possession of a controlled substance. In addition, it was suggested that individuals on probation have been charged with the crime of being in possession of drug paraphernalia because they have failed to clean all items defined as paraphernalia out of their residences.

The commission considered a bill draft to reduce the penalty for possession of drug paraphernalia from a Class C felony to a Class A misdemeanor for most drugs, reduce the penalty for possession of drug paraphernalia for marijuana from a Class A misdemeanor to a Class B misdemeanor, repeal the statutory provision that makes it a criminal offense to ingest a controlled substance, and remove the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession and provide a judge discretion with respect to the length of the probation within those statutory limits. Proponents of the bill draft contended the offense for ingestion of a controlled substance is not enforced uniformly throughout the state and the trend in other states has been to repeal ingestion statutes. In addition, it was argued, the severity of the penalties for ingestion and for possession of drug paraphernalia have provided prosecutors with a tool to force plea agreements which has affected resources throughout the criminal justice system and filled correctional facilities with individuals who are generally not a great threat to public safety.

Because of concerns with respect to opposition from law enforcement and prosecutors, commission members were reluctant to recommend repeal of the ingestion statute without additional study. Members of the commission also expressed concerns with respect to the proposed changes to the drug paraphernalia penalties. Representatives of law enforcement agencies argued that the penalty for possession of drug paraphernalia should be equivalent to the penalty for possession of the associated drug.

Because members of the commission generally agreed that further consideration of changing the penalties for possession of drug paraphernalia is needed, the commission considered a second bill draft addressing the penalties for possession of drug paraphernalia which was based upon 2013 Senate Bill No. 2319, which failed to pass. The bill draft would not change the penalty for possession of paraphernalia used to manufacture a controlled substance, but would reduce the penalty for possession of paraphernalia intended for the use of a controlled substance from a Class C felony to a Class A misdemeanor and reduce the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor.

The commission discussed the criminal offense of endangerment of a child or vulnerable adult and the impact of the provisions relating to exposure to marijuana. The commission considered a bill draft that would have revised the definition of a controlled substance to provide that a controlled substance does not include less than one ounce of marijuana, revised the definition of drug paraphernalia to remove its applicability to marijuana paraphernalia, and removed references to exposure of a child or vulnerable adult to a controlled substance or drug paraphernalia. Representatives of the Department of Human Services testified that the change with respect to exposure of a child to controlled substance would impact the definition of a deprived child and the ability of prosecutors to terminate parental rights. Commission members also expressed concerns with respect to the changes in the definition of a controlled substance.

The commission received testimony from a retired district judge relating to mandatory sentences. The judge testified that although the population of the state increased less than 7 percent between 1984 and 2013, the inmate population in the state increased by more than 360 percent and that much of that increase is likely the result of drug offenses. The judge contended that mandatory sentencing requirements have taken away the ability of judges to apply appropriate sentences based upon the unique circumstances of each individual crime and defendant.

Commission members extensively discussed mandatory sentencing provisions and to what extent judges should have flexibility in determining appropriate sentences for various offenses for which mandatory sentences are required by statute.

A member of the commission distributed for the commission's consideration a bill draft that would have allowed an offender to request a court to reduce a mandatory term of imprisonment for a controlled substance violation. The bill draft was based upon proposed federal legislation.

The commission considered a bill draft based upon a proposal submitted by representatives of the Department of Corrections and Rehabilitation, which would have removed the mandatory imprisonment provisions with respect to the manufacture, delivery, or possession of controlled substances and changed the penalty for the manufacture, delivery, or possession of a controlled substance within 1,000 feet of a school from an eight-year term of imprisonment to a term of not to exceed eight years if the court determined there was a nexus between the offense and the real property comprising the school.

Proponents of the bill draft argued the 1,000-foot threshold and enhanced sentence was unnecessary and served as a tool for prosecutors to obtain guilty pleas. Because most areas in most cities are located within 1,000 feet of a school or other property covered by the 1,000-foot threshold, it was argued the provision has the effect of allowing a prosecutor to charge a defendant with the offense in most circumstances in which a defendant is caught within a city. Proponents of the bill draft contended the mandatory sentence requirements take power out of the hands of judges and shift power to prosecutors who are not neutral and objective.

Opponents of the bill draft contended the state has an important interest in keeping controlled substances away from schools. In addition, they contended, mandatory sentences are a key tool necessary to fight the trafficking of drugs. Opponents of the bill draft expressed concerns with taking too large of a step in removing all the mandatory sentences for controlled substances offenses.

The commission considered a bill draft to allow a court to depart from an applicable mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public. However, the bill would not allow a court to depart from a mandatory sentence if the defendant used force or caused serious bodily injury during the commission of the offense or used a dangerous weapon during the commission of the offense or if the defendant has been convicted of a substantially similar offense during the 10 years before the commission of the offense. The bill draft also would have required an annual report regarding departures from mandatory sentences and reinvestment of savings from the departures to advance evidence-based practices to reduce recidivism.

Proponents of the bill draft contended the proposal would provide a judge discretion in sentencing nonviolent offenders. Members of the commission expressed concerns with respect to the reporting of departures from mandatory sentences and the impact the reporting requirement may have on the willingness of judges to exercise that discretion. In addition, there were questions raised regarding the feasibility of determining savings attributable to departures from mandatory sentences. There also were questions concerning the impact of the exception that would not allow a departure from a mandatory sentence if the defendant had been convicted of a substantially similar crime within the previous 10 years. It was argued that exception would likely affect most defendants subject to a mandatory sentence.

RECOMMENDATIONS

Supervision and Probation Bill

The commission recommends Senate Bill No. 2027 to reduce the length of probation for most felony offenses, except sex offenses and violent crimes, from five years to three years; reduce the length of probation for misdemeanor offenses from two years to 360 days; provide the maximum length of probation extension for violating the conditions of probation is 360 days; allow a court to authorize the Department of Corrections and Rehabilitation to terminate supervision after 18 months if the offender has complied with the conditions of probation; and allow up to 5 nonsuccessive periods of incarceration within a 12-month period, which may not exceed 48 hours, as an alternative to a revocation of probation.

Legislative Management Study of Restitution Resolution

The commission recommends House Concurrent Resolution 3002 to provide for a Legislative Management study of restitution for criminal acts.

Transfer of Juveniles to Adult Court Bill

The commission recommends Senate Bill No. 2028 to eliminate the mandatory transfer of a juvenile to adult court for offenses related to manufacture, delivery, or possession of controlled substances.

Abuse and Neglect of a Child Bill

The commission recommends House Bill No. 1029 to separate the offenses of abuse of a child and neglect of a child into different statutory provisions and eliminate the Class B felony penalty for the offense of neglect of a child.

Term of Probation Bill

The commission recommends Senate Bill No. 2029 to remove the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession, and to provide a judge discretion with respect to the length of the probation within those statutory limits.

Possession of Drug Paraphernalia Penalties Bill

The commission recommends Senate Bill No. 2030 to reduce the penalty for possession of paraphernalia intended for the use of a controlled substance from a Class C felony to a Class A misdemeanor and reduce the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor.

Departures from Mandatory Sentences Bill

The commission recommends House Bill No. 1030 to allow a court to depart from a mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.

Executive Budget Recommendations

The commission recommends the Governor include additional funding in the executive budget for the 2015-17 biennium to provide residential treatment program beds statewide, with an emphasis on additional beds in the western portion of the state.

The commission recommends the Governor include in the executive budget funding to replicate the Cass County Jail diversion project in other areas of the state.

The commission recommends the Governor include funding in the executive budget for a study of evidence-based practices used by the Department of Corrections and Rehabilitation, the Department of Human Services, and other agencies which are intended to reduce incarceration and recidivism.

The commission expresses its support for funding of appropriate treatment services to support the Department of Human Services and the Department of Corrections and Rehabilitation in meeting identified treatment service gaps.

The commission expresses its support for increased funding of community service supervision grants.

Other Statements and Recommendations

The commission encourages the judicial branch to examine implementing a pilot program similar to the HOPE program.

The commission recommends the Governor contact The Pew Charitable Trusts to propose a collaborative effort to implement a justice reform study in the state.

ECONOMIC IMPACT COMMITTEE

The Economic Impact Committee was assigned two studies:

- Section 18 of Senate Bill No. 2012 (2013) directed a study of the long-term costs of transportation infrastructure maintenance and improvement projects and methods for funding these projects.
- Section 38 of Senate Bill No. 2018 (2013) directed a study of child care services, including consideration of the current and potential needs for child care services and the current and potential workforce needs related to child care, and the current quality of child care services.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from the Department of Commerce semiannually regarding the status of the program to establish and administer an unmanned aircraft systems test site in cooperation with the University of North Dakota, the Aeronautics Commission, the Adjutant General, and private parties appointed by the Governor (North Dakota Century Code Section 54-60-28).
- A report from the Emergency Services Communications Coordinating Committee by November first of each even-numbered year regarding the use of the assessed communications services fee revenue and any recommendations regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers (Section 57-40.6-12).
- A report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2015 (2013 House Bill No. 1136, Section 50 and 2013 House Bill No. 1015, Section 42).
- A report from the North Dakota Economic Development Foundation before September 1, 2014, regarding progress made toward recommendations provided as part of the 2020 and Beyond Initiative and any recommendations for future legislation (2013 Senate Bill No. 2018, Section 36).
- An inventory from the Housing Finance Agency regarding government programs providing residential and commercial development assistance which identifies program overlap and gaps (2013 Senate Bill No. 2339, Section 2).

Committee members were Senators Dave Oehlke (Chairman), Tom Campbell, Ron Carlisle, Mac Schneider, George B. Sinner, and Terry M. Wanzek, and Representatives Thomas Beadle, Rick Becker, Joshua A. Boschee, Mike D. Brandenburg, Ed Gruchalla, Bob Hunskor, Nancy Johnson, Matthew M. Klein, Vernon R. Laning, and Gary R. Sukut.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

TRANSPORTATION INFRASTRUCTURE STUDY

Background

According to the North Dakota Department of Transportation, North Dakota has 166 miles of road for every 1,000 people in the state, which ranks the state first in the nation in road miles per capita. The United States Department of Transportation publication *State Transportation Statistics 2010* reports the state as having approximately 87,000 miles in public road length in 2010. Of the total amount, almost 7,400 miles are part of the state highway system. Included in the state highway system are 571 miles of interstate roads. About 68,000 of the miles are under the jurisdiction of county, city, and township governments. The United States Department of Transportation National Bridge Inventory lists the state as having 4,435 bridges in August 2009, 933 of which were classified as either structurally deficient or functionally obsolete. The state ranks fifth per capita in the number of bridges, with approximately 7 bridges per 1,000 people. In addition to the ground transportation, the state has 89 public-use airports.

Highway Funding

In addition to the substantial amounts of federal funding for the construction and maintenance of highways, the major state sources of highway funding historically have been derived from the collection of motor fuels taxes and motor vehicle registrations.

Article X, Section 11, of the Constitution of North Dakota, provides:

> Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

The majority of funds received from motor fuels taxes and motor vehicle registration fees are deposited in the highway tax distribution fund. Section 54-27-19 provides the highway tax distribution fund consists of the "moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes." This section provides after the first $5.5 million per biennium is transferred to the state highway fund for the purpose of providing administrative assistance to other transferees, the money in the fund must be distributed by the State Treasurer as follows:

1. Sixty-one and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census.
   a. For counties having no cities with a population of ten thousand or more, a statewide per capita average must be used, as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state. Each city must be paid an amount equal to the product of the statewide per capita and that city's population.
   b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
      (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
      (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.
      (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.
      (4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under paragraphs 2 and 3 for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.
5. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11

of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

Section 54-27-19(1) provides the majority of the funds from the highway tax distribution fund (61.3 percent) must be transferred to the Department of Transportation for deposit in the state highway fund. Section 24-02-37 provides, except for investment income, the money of the state highway fund must be applied in the following priority:

a. The cost of maintaining the state highway system.

b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota.

c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

Section 54-27-19(2) requires 2.7 percent of the funds from the highway tax distribution fund to be deposited in the township highway fund. Section 54-27-19.1 directs the State Treasurer to distribute the money to the counties of the state based on the length of township roads in each county compared to the length of all township roads in the state. To receive any funds, organized townships must provide 50 percent matching funds. Each county treasurer is required to allocate the funds received to the organized townships in the county which provide 50 percent matching funds based on the length of township roads in each of those organized townships compared to the length of all township roads in the county. The funds received must be deposited in the township road and bridge fund and used for highway and bridge purposes. If a county does not have organized townships, or has some organized and some unorganized townships, the county is required to retain a pro rata portion of the funds received based on the length of roads in unorganized townships compared to the length of township roads in organized townships in the county.

Section 54-27-19(3) allocates 1.5 percent of the funds from the highway tax distribution fund to the public transportation fund. Section 39-04.2-04 provides money in the public transportation fund must be disbursed under guidelines issued by the Director of the Department of Transportation and must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped. In addition, the money may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the Director.

2013 Transportation Funding Legislation

Highways

The 2013 Legislative Assembly provided enhanced funding from a number of sources for highway construction and maintenance in the state. The enhanced funding for highway infrastructure was largely provided through three bills--Senate Bill No. 2012, Senate Bill No. 2176, and House Bill No. 1358.

Senate Bill No. 2012, the Department of Transportation general appropriation bill, included:

- A $541.6 million transfer from the general fund to the highway fund.
- A $1.1 million contingent transfer from the general fund to the public transportation fund. The transfer is contingent upon deposits from the highway tax distribution fund into the public transportation fund being $5 million or less during the preceding state fiscal year.
- An appropriation of $640,000 from the highway rail grade crossing safety projects fund for the estimated costs-to-continue previously approved highway rail grade crossing safety projects into the 2013-15 biennium.
- An appropriation of $500,000 from the highway rail grade crossing safety projects fund for a highway rail grade crossing safety pilot program.
- A statement authorizing the Department of Transportation to transfer funds between the salaries and wages, operating expenses, capital assets, and grants line items when it is cost-effective for the construction and maintenance of highways.
- An appropriation of $720,000 from the general fund to the State Treasurer to distribute funding to any political subdivision eligible to receive a distribution under subsection 3 of Section 27 of Chapter 579 of the 2011 Session Laws which has not already received a distribution under that subsection.

- An appropriation of $385,000 to the State Treasurer as an emergency to correct an error in distributions made to townships under Senate Bill No. 2176.

Senate Bill No. 2176 provided emergency appropriations to the Department of Transportation for the construction and maintenance of state highways and to the State Treasurer for providing transportation funding distributions. The bill, which became effective on March 18, 2013, provided:

- An appropriation of one-time funding of $620 million from the general fund to the Department of Transportation for the construction and maintenance of state highways.
- An appropriation of one-time funding of $100 million from the general fund to the State Treasurer for distribution as follows:

  $64 million to non-oil-producing counties and cities pursuant to Section 54-27-19(4).

  $16 million to counties and townships in non-oil-producing counties pursuant to Section 54-27-19.1. Organized townships are not required to provide matching funds to receive these distributions.

  $20 million to counties and townships in non-oil-producing counties through a distribution of $15,000 to each organized township and a distribution of $15,000 for each unorganized township to the county in which the unorganized township is located. If any funds remain after these distributions, the State Treasurer is required to distribute 80 percent of the remaining funds to counties and cities in the same manner as the $64 million distribution and to distribute 20 percent of the remaining funds to counties and townships in the same manner as the $16 million distribution.

House Bill No. 1358 restructured the allocation of oil and gas gross production tax collections and provided money for transportation funding to be used by the Department of Transportation and to be distributed by the State Treasurer. The bill provided:

- An appropriation of $120 million from the general fund to the Department of Transportation for county road and bridge projects in counties that received less than $5 million of oil and gas tax allocations under Section 57-51-15(2) during state fiscal year 2013. The funding must be distributed based on the number of miles of roadway located in each county defined by the Department of Transportation as a county major collector roadway.
- An appropriation of $160 million from the general fund to the Department of Transportation for county road and bridge projects in counties that received $5 million or more of oil and gas tax allocations under Section 57-51-15(2) during state fiscal year 2013. The funding must be distributed based on data supplied by the Upper Great Plains Transportation Institute.
- An appropriation of $8,760,000 from the general fund to the State Treasurer for grants to townships located in counties that received between $500,000 and $5,000,000 of oil and gas tax allocations under Section 57-51-15(2) during state fiscal year 2013. Each eligible township is to receive a grant of $15,000 during each year of the biennium.

In addition to the bills appropriating funds for transportation infrastructure, one other bill of note relating to highway funding was Senate Bill No. 2025. The bill provided 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. Previously, all extraordinary road use fees were deposited in the state highway fund.

Aeronautics

The 2013 Legislative Assembly provided enhanced airport grant funding through House Bill No. 1358, which was in addition to the funding provided through the North Dakota Aeronautics Commission's general appropriation in Senate Bill No. 2006. Senate Bill No. 2006 provided appropriations for grants in a sum of $15.5 million, including:

- An appropriation of one-time funding of $6 million from the general fund for grants to airports.
- An appropriation of $3,450,000 from special funds and $550,000 from the general fund for the air service airport grant program.
- An appropriation of $4 million from special funds for the general aviation grant program.
- An appropriation of $400,000 from special funds for educational grants.
- An appropriation of $1.1 million from special funds for airport planning grants.

House Bill No. 1358 appropriated $60 million from the oil and gas impact grant fund to the Commissioner of the Board of University and School Lands for grants to airports impacted by oil and gas development. The grants include cost-share requirements and give priority to airports that are eligible to receive federal funding.

Upper Great Plains Transportation Institute

During the 2011-12 interim, the Upper Great Plains Transportation Institute conducted studies of county and township road infrastructure needs. The report of the studies identified $521 million of road infrastructure needs in oil and gas-producing counties and an overall total of $834 million of road infrastructure needs in all counties of the state for the 2013-15 biennium.

The 2013 Legislative Assembly included within the budget for the Upper Great Plains Transportation Institute an additional $1.25 million in one-time funding to match federal grants to assist in transportation studies.

Testimony and Committee Considerations

The committee received several reports from representatives of the Department of Transportation regarding the status of state road and bridge projects, the status of federal highway funding, and challenges facing the department. In addition, the committee received reports regarding airport, railroad, and pipeline infrastructure in the state; local and tribal government transportation needs; and transportation studies conducted by the Upper Great Plains Transportation Institute.

State Road and Bridge Projects

The state highway construction program has increased from approximately $249 million in 2007 to over $800 million in 2014. Traffic volume in the state increased by 22 percent from 2010 to 2012 and over that same time increased by 53 percent on state highways in the western portion of the state. Significant increases in heavy truck traffic have accelerated and increased the deterioration of roads throughout the state, but most dramatically in the oil-impacted areas. As a result of the dramatic increase in traffic in the western portion of the state, the Department of Transportation began the process of establishing an integrated road system concept to address the movement of commerce in the four largest oil-producing counties, which is expected to be completed by the end of 2014.

The Director of the Department of Transportation provided the committee with regular updates regarding the status of road and bridge projects. Among the major projects for which the committee received updates were the state-funded Highway 85 four-lane project between Williston and Watford City and the construction of truck bypass routes for Williston, Watford City, Dickinson, Killdeer, New Town, and Alexander which also are being funded by the state.

By September 2014, all four lanes were open to traffic on Highway 85 from Watford City to Alexander and the portion from Alexander to County Road 16 was under construction and expected to be open to traffic by the end of the construction season. It is expected that construction on the remaining portion, from County Road 16 to Williston, will begin yet in 2014 with an expected completion in 2015. The replacement of the Lewis and Clark Bridge on the final portion of the project is estimated to be completed in 2016.

The Williston bypass, which is being constructed in phases, is anticipated to be fully completed by the end of the 2015 construction season. The Watford City and Alexander bypasses were scheduled to be opened by the end of the 2014 construction season. The Dickinson bypass is being constructed in phases with the Phase 1 interim bypass being constructed in 2013 and 2014 and Phase 2 scheduled for construction during the 2014 and 2015 construction seasons. The New Town bypass is scheduled for completion by the end of the 2014 construction season and the Killdeer bypass is expected to begin construction in 2015.

Federal Highway Funding

Although North Dakota was allocated over $235 million in federal highway funding for 2014, the United States Congress had not yet passed legislation providing highway funding for 2015. Although a number of states have suspended or canceled highway construction plans for 2015 due to the concern of federal funding not being available, the Director of the department informed the committee representatives of the department are developing plans for the 2015-17 biennium based upon the assumption that Congress will act to restore federal highway funding to levels similar to 2014. However, the committee also was informed that representatives of the department are prepared to revise plans for the 2015-17 budget if necessary due to changes in federal funding. Because of the budget surplus existing in North Dakota, representatives of the department and members of the committee generally agreed the state is uniquely situated to continue highway construction despite the uncertainty with respect to federal funding levels.

Department of Transportation Challenges

In addition to the uncertainty existing with respect to federal highway funding, the committee received information regarding other challenges the Department of Transportation is facing.

The Director of the department testified that the cost of highway projects has been increasing due to a number of factors. Land acquisition has become significantly more expensive in oil-impacted areas of the state. The cost to the department to acquire property varied greatly with the per-acre cost in rural areas generally in the range of $25,000 to $40,000 while the acquisition cost for the bypass in Williston was approximately $165,000 per acre. Although the bustling economy in the state has attracted many out-of-state contractors to bid on highway projects, the cost of labor also has increased. In addition, the cost of materials needed for highway projects has increased. As a result, the construction cost index in the state has risen substantially--construction that cost $1 in 2001 cost $2.61 in 2013. In general, the cost of construction rose much more dramatically in the western portion of the state. The cost of concrete overlay in the west was approximately 61 percent higher than in the east. Similarly, the cost of minor rehabilitation of a road surface was 74 percent higher in the west and the cost of milling and overlaying a two-lane road was approximately 240 percent higher in the west.

The Director of the department also informed the committee the department has been having difficulty in hiring and retaining employees, particularly in the western portion of the state.

Local Government Transportation Issues

The committee held meetings in Williston and Grand Forks and received reports regarding transportation issues from representatives of local governments. Representatives of local governments in the oil-impacted areas in the western portion of the state testified that despite the additional funding going to oil-impacted areas, cities, counties, and townships are unable to meet growing infrastructure needs. Increased traffic has made it nearly impossible for local governments to construct and maintain roads in developing areas. Local officials in the oil-impacted area contended the share of oil gross production taxes returned to impacted local governments is substantially lower than in most other oil-producing states.

Representatives of local governments in the eastern portion of the state contended that growth throughout the state has resulted in unmet transportation infrastructure needs statewide. A representative of the city of Grand Forks testified that the metropolitan planning organization long-range transportation plan identified unmet needs of over $88 million for the next decade. Beyond the need for roads, the committee was informed public transit and pedestrian infrastructure needs are increasing while federal funding has decreased. The committee was informed traffic related to oil development has increased in the eastern portion of the state and agricultural traffic in rural areas has affected road conditions due to the larger size of modern farm equipment. As a result, rural counties and townships have been unable to keep up with road and bridge repair.

Tribal Transportation Issues

The committee received information from tribal authorities relating to tribal transportation concerns, particularly the reduction in federal funding available for tribal roads. A representative of the Turtle Mountain Band of Chippewa Indians reported to the committee regarding the need to reconstruct approximately 14 miles of Jack Rabbit Road which runs between Belcourt and Dunseith. Although the road is classified as a Bureau of Indian Affairs road, the Bureau has not provided funding to repair the road and the tribal government has attempted to secure state funding to assist with the reconstruction of the road.

Although the state has not been able to assist with the reconstruction of Jack Rabbit Road, the Director of the Department of Transportation reported the department has worked to develop relationships with tribal governments to address road projects within tribal boundaries. When a project is approved within tribal boundaries, the department enters a Tribal Employment Rights Ordinance with the affected tribe which details the type of work to be performed, the location of the project, and applicable fees and costs to be paid to the tribe. The department also works closely with tribal governments to assist with highway safety programs.

Railroad Infrastructure and Railroad Safety

Although the Department of Transportation has little jurisdiction over railroads, the department is required to develop a state rail plan. The department receives relatively small amounts of federal funding (about $2.5 million per year) for rail and highway safety projects, has administered $1.6 million in one-time state funds for rail quiet zone projects, and receives $250,000 per year in locomotive fuel excise taxes to upgrade signals at highway rail crossings. The department also administers a railroad loan program to assist with rail upgrades and enhancing rail infrastructure to maintain or improve rail service. Since 1982, the department has provided over $37 million in loans and had outstanding loans of nearly $15 million as of September 2014.

The committee received testimony from representatives of shortline railroads regarding infrastructure needs of the shortline railroads operating in the state. Approximately 40 percent of the track miles in the state are operated by shortline railroads that generally began operation in the 1980s when the large railroad companies were abandoning tracks in rural areas. Representatives of the shortline railroads informed the committee the state railroad loan program is an important tool for the shortline railroads to use to help finance the cost of track rehabilitation that is needed to

serve rural agricultural areas of the state. Because much of the rail infrastructure operated by the shortline railroads is quite old and in need of replacement, representatives of the shortline railroads advocated for increased funding by the state to support the railroad loan program.

The committee also received testimony from a representative of the Burlington Northern Santa Fe (BNSF) Railway regarding railroad infrastructure and railway safety issues. The committee was informed BNSF has invested $5 billion in 2014 to improve its rail system. Approximately 20 percent of that total has been invested in the northern corridor and about 10 percent of that portion is being invested in North Dakota. Despite backlogs of railcar orders for agricultural producers, the representative of BNSF testified the company is attempting to improve service in the state while also increasing movement of oil to relieve the pressure on the highway system. Although there have been a number of derailments and rail accidents involving the transportation of oil, the representative of BNSF informed the committee the company is improving the safety of tanker cars and slowing the speed of trains transporting oil.

The committee received a report from a representative of the Department of Emergency Services regarding preparedness of the state and local emergency service providers to address incidents such as the trail derailment near Casselton which resulted in the explosion and fire of railcars carrying oil. The report indicated the response to the Casselton incident was well coordinated, but also a wake-up call for emergency responders.

The committee received a report regarding rail service in the Grand Forks region. As a result of the additional rail traffic serving the oil-impacted areas, rail transportation through the northeastern part of the state also has increased. The report indicated there is a need to examine further development of secondary rail lines in the region.

Air Transportation Infrastructure

The committee received a report from a representative of the State Aeronautics Commission regarding air transportation in the state. The report indicated airline boardings increased an average of 14 percent per year from 2009 through 2012. However, enplanements at the airports in Minot, Williston, and Dickinson increased at a much more dramatic rate--from about 100,000 enplanements in 2009 to nearly 300,000 in 2012. As a result of the growth in air traffic, airport facilities are in need of improvement, including runway upgrades and terminal and parking lot expansions. The representative of the Commission informed the committee the Commission would be developing a state aviation system plan update to replace the last plan which was completed in 2008.

The committee received a report regarding the condition of the airport in Williston. Because of the increase in air traffic in Williston, the city was exploring the feasibility of building a new airport at an estimated cost of over $200 million. It was estimated the cost of expanding the current airport would be approximately $350 million. The representative of the airport indicated the city would be seeking additional state funding as well as federal funding to address the construction of the airport.

The committee also received a report regarding air traffic in the eastern portion of the state. The report indicated that in addition to the significant increase in commercial passenger traffic, air cargo and corporate air traffic has increased as a result of oil development in the western portion of the state. It was estimated the infrastructure needs for the Grand Forks airport over the next decade will be in excess of $100 million.

Pipeline Infrastructure

The committee received a report from a member of the Public Service Commission regarding pipeline infrastructure and regulation. Crude pipeline capacity in the state is projected to double between 2014 and 2016. The increases in pipeline capacity are expected to relieve some of the truck and rail transport issues as oil and gas production is projected to continue to grow.

Upper Great Plains Transportation Institute

The committee received several reports from representatives of the Upper Great Plains Transportation Institute regarding the transportation infrastructure needs in the state. The institute's study of county, township, and tribal roads and bridges infrastructure needs indicated there has been an 18 percent increase in the estimated cost of improvements for work on paved roads since the last study conducted by the institute during the previous biennium. The study projects paved road investment and maintenance costs during the next 20 years to be $2.59 billion, with about 43 percent of the investment needed in the 17 oil- and gas- producing counties. With respect to unpaved roads, the report concluded statewide infrastructure needs over the next 20 years will be $5.45 billion, about 54 percent of which will be needed in the oil- and gas- producing counties. The total projected investment needed for paved and unpaved roads over the next 20 years is $8.14 billion. The institute also estimated approximately $327 million in bridge investment expenditures will be necessary over the next 20 years, with 77 percent of that cost for bridge replacements. According to the study, the road investment and maintenance needs may be summarized as follows:

Summary of All Road Investment and Maintenance Needs for Counties and Townships in North Dakota (Amounts Shown in Millions)			
Period	**Statewide**	**Oil Patch**	**Rest of State**
2015-16	$983	$544	$440
2017-18	871	419	452
2019-20	833	457	376
2021-22	782	430	352
2023-24	680	345	335
2025-34	3,994	1,936	2,057
Total	$8,142	$4,130	$4,011

Conclusion

The committee agreed with the findings and recommendations in the report of the Upper Great Plains Transportation Institute and requests the Governor to consider the report's recommendations for funding in the budget for the Department of Transportation for the 2015-17 biennium.

CHILD CARE SERVICES STUDY

Background

According to the United States Census Bureau, in approximately 78 percent of the families in North Dakota with children under the age of 18 years, both the husband and wife are in the labor force. The *2013 Kids Count Factbook* produced by the Annie E. Casey Foundation reports in 2010 over 82 percent of mothers with children under the age of 17 years in this state are engaged in the labor force. The factbook also reports in 2011 there were an estimated 16,000 families in the state in which the family income was less than twice the federal poverty level, at least one parent worked 50 or more weeks during the previous year, and there was at least one child under the age of 18 years in the family.

North Dakota Law

Chapter 50-11.1 addresses early childhood services. Section 50-11.1-01 defines early childhood services as "the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services." However, the following are excluded from the definition of early childhood services:

- Substitute parental child care provided pursuant to Chapter 50-11.
- Child care provided in any educational facility, whether public or private, in grade 1 or above.
- Child care provided in a kindergarten or a nonpublic elementary school.
- Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the Superintendent of Public Instruction.
- Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.
- Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
- Summer resident or day camps for children which serve no children under six years of age for more than two weeks.
- Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- Head Start and early Head Start programs that are federally funded and meet federal Head Start performance standards.
- Child care provided in a medical facility by medical personnel to children who are ill.

Section 50-11.1-06 allows an in-home provider to apply for a voluntary annual registration document from the Department of Human Services. An in-home provider is defined under Section 50-11.1-01 as "any person who provides early childhood services to children in the children's home."

Except for onsite child care services for fewer than 10 children per location and which are located in the actual building in which the child's parent is employed, a person may not operate a family child care, group child care, preschool, school-age child care, or child care center unless licensed by the Department of Human Services. A family child care is defined as "a private residence licensed to provide early childhood services for no more than seven

children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children." A group child care is defined as "a child care program licensed to provide early childhood services for thirty or fewer children." A preschool is "a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day." A school-age child care program is "a child care program licensed to provide early childhood services on a regular basis for nineteen or more children aged five years through eleven years." A child care center is "an early childhood program licensed to provide early childhood services to nineteen or more children."

To obtain a license to operate an early childhood program, an applicant must submit an application and a license fee to the Department of Human Services. In addition, Section 50-11.1-04 requires the department or an authorized agent of the department to investigate the applicant's activities and proposed standards of care and the applicant's premises. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Section 50-11.1-06.2 requires upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant for early childhood services licensure, self-declaration, or in-home provider, as well as new staff members of early childhood services programs and new household members of a residence out of which early childhood services are provided, must obtain two sets of the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints. The individual is required to request the agency to submit the fingerprints and a completed fingerprint card for each set to the Division of Children and Family Services of the Department of Human Services or to the department's authorized agent. If the division has no record of a determination of services required for child abuse or neglect, the division is required to submit the fingerprints to the Bureau of Criminal Investigation to determine if there is any criminal history record information regarding the applicant, household members, or staff members. The results of the investigations must be forwarded to the division or to the department's authorized agent.

In addition to the licensed early childhood programs, Chapter 50-11.1 provides for a voluntary self-declaration for documentation of an individual providing early childhood services in a private residence for up to three children below the age of 24 months or for no more than five children through the age of 11 years. An individual may apply to the Department of Human Services for a self-declaration, and the department is responsible for determining if the individual meets the standards determined by rule by the department for a self-declaration.

Section 50-11.1-07 authorizes the Department of Human Services to investigate and inspect an early childhood program, or a holder of a self-declaration or registration document and the conditions of their premises, the qualifications of a provider of early childhood services, of current and prospective staff members, of any in-home provider or applicant seeking or holding a license, self-declaration, or registration document. In addition, Chapter 50-11.1 provides procedures under which the department may issue correction orders, fiscal sanctions, or suspension or revocation of a license, self-declaration, or registration document.

Section 50-11.1-08 authorizes the Department of Human Services to adopt reasonable minimum standards for early childhood programs and adopt rules for the regulation of early childhood services.

Section 50-11.1-14 authorizes the Department of Human Services to establish a statewide system to build systematic early childhood workforce voluntary training which may include distance learning formats, a professional registry, certificates, and specializations. Section 50-11.1-14.1 also addresses early childhood care and education workforce issues. Under that section, the department is required to provide voluntary, progressive training opportunities leading to credentials, provide supports for the early childhood care and education workforce, and implement a registry to track workforce participation. In addition, that section requires the department to implement a voluntary quality improvement process for licensed early childhood facilities. The department is authorized to provide a quality incentive payment and a higher reimbursement rate for child care assistance program payments to a participating early childhood facility, provide technical assistance and support to an early childhood facility that applies for quality improvement, and provide financial incentives to an early childhood facility that sustains and increases program quality. The department may contract with a private, nonprofit agency to provide the technical assistance.

In 2011 the Legislative Assembly adopted Senate Bill No. 2298 (codified as Section 50-11.1-18) which authorized the Department of Human Services to establish, in collaboration with the Department of Commerce, an early childhood services inclusion grant program for licensed early childhood services providers that provide care for children with disabilities or developmental delays. The bill also authorized the department to fund early childhood services specialists to make available technical assistance to early childhood services providers that care for children with special needs or developmental delays. The bill appropriated $50,000 to the Department of Human Services for the purpose of funding the early childhood services inclusion support services. The Legislative Assembly also

appropriated $3.1 million in Senate Bill No. 2057 (2011) to the Department of Human Services for the purpose of providing grants to child care service providers for workforce development, quality improvement, technical assistance, and capacity building. Senate Bill No. 2298 (2011) provided the total amount of grants awarded under that bill which were funded by the Department of Commerce grant line item may not exceed 50 percent of the funds available under the Department of Commerce's grants for the early childhood facilities program.

Chapter 50-33 provides for a child care assistance program. Under that chapter, the Department of Human Services is responsible for paying child care costs required as a result of participation in allowable activities by the eligible caretaker in a temporary assistance for needy families household or diversion assistance household. Subject to the availability of funding, the department is authorized to expand child care assistance to include an eligible caretaker who is attending a postsecondary education program in pursuit of a one-year, two-year, or four-year degree or certificate. The chapter provides application requirements and requires the department to adopt rules for administration of the program.

2013 Legislation

In 2013 the Legislative Assembly considered several bills relating to early childhood services.

House Bill No. 1422 made changes to the licensed child care requirements, including increasing the maximum number of children in a group child care from 18 to 30, providing that if a child care facility has sufficient indoor recreation space then outdoor play space is not required, and codifying staffing requirements for a child care center. The bill provided the maximum group size of children in a child care center:

1. For children less than eighteen months of age, the maximum group size is ten children;
2. For children eighteen months of age to thirty-six months of age, the maximum group size is fifteen children;
3. For children three years of age to four years of age, the maximum group size is twenty children;
4. For children four years of age to five years of age, the maximum group size is twenty five children;
5. For children five years of age to six years of age, the maximum group size is thirty children; and
6. For children six years of age to twelve years of age, the maximum group size is forty children.

The provision of House Bill No. 1422, which established maximum group size for child care centers, excluded any child care center operator who has maintained a license since before January 1, 1999. The bill also provided the maximum group size requirements are effective until the date administrative rules containing those requirements take effect.

House Bill No. 1110 increased from 15 to 30 the number of days within which the Department of Human Services must make a decision on whether an applicant is eligible for child care assistance.

Senate Bill No. 2085 revised the definition of "family child care" to remove the limits on when family child care providers can care for school-age children, added a definition of "school-age children," updated the regulations on smoking on premises where early childhood services are provided, and removed the expiration date for the Early Childhood Services Advisory Board.

Senate Bill No. 2244 which, as introduced, would have appropriated funds for early childhood services specialists and grants to early childhood services providers, provided for a Legislative Management study of child care services. The bill was not prioritized for study.

Senate Concurrent Resolution No. 4019 directed a study of early childhood services. The resolution was not prioritized for study.

House Bill No. 1317, which failed to pass, would have established a student loan paydown program for early childhood education and care providers.

In addition to those bills, several bills included funding for programs related to child care services. The funding included:

- $24,507,404 to the Department of Human Services for child care assistance programs, including $20,898,665 for grant assistance payments; $2,500,000 from the general fund contingent upon the amount of funding needed for the expansion of the child care assistance program, of which up to $1,000,000 may be used for grants for workforce development pursuant to Section 50-11.1-14.1; $897,336 for payments to temporary assistance for needy families; and $211,403 for state liaison to collaborate with Head Start programs.

- $8,140,480 for workforce development and training, including $4,100,000 to the Department of Human Services for grants to child care providers for workforce development pursuant to Section 50-11.1-14.1; $2,717,399 to the Department of Human Services for quality assurance technical assistance; $773,081 to the Department of Human Services for licensing; $400,000 to the Department of Human Services for grants to child care providers serving those with disabilities pursuant to Section 50-11.1-18; and $150,000 to the Department of Public Instruction for continuing education grants for preschool teachers.
- $3,225,000 for child care facilities, including $2,600,000 to the Department of Commerce for child care facility grants; $500,000 from the Development Fund for early childhood facility financing; $125,000 from the general fund to the Department of Public Instruction for grants to schools for safety compliant space; expansion of the beginning entrepreneur loan guarantee program to include child care facilities--the amount of loan guarantees is unknown; and financing assistance for child care facilities through the partnership in assisting community expansion--the amount of assistance is unknown.
- $200,000 for an early childhood care and education study to the Department of Public Instruction.

Testimony and Committee Considerations

Child Care Aware of North Dakota

The committee received reports from representatives of Child Care Aware of North Dakota, a service provided by the Lakes & Prairies Community Action Partnership, Inc., in the eastern portion of the state and Lutheran Social Services in the western portion of the state. The purpose of Child Care Aware, which receives funding from the Department of Human Services and provides services to the department, is to help families find child care, assist early childhood providers with developing skills and knowledge, and help assess the child care needs of the state and communities in the state.

According to the 2013 child care trend data report compiled by Child Care Aware, child care supply in the state declined from 41 percent of demand in 2011 to 34 percent in 2013. By 2014, the child care supply increased to 37 percent of demand. In 2013, 10 counties had child care supply that met less than 10 percent of the demand. Between 2009 and 2013, the number of licensed family child cares in the state decreased from 357 to 309, but increased in 2014 to 361; between 2009 and 2013, the number of licensed group child cares decreased from 863 to 816, but increased to 830 in 2014; between 2009 and 2013, the number of licensed school age programs was steady at 49, and increased to 53 in 2014; and between 2009 and 2013, the number of licensed child care centers increased from 132 to 162, but decreased in 2014 to 157. From 2009 to 2013, the total capacity of licensed child care statewide decreased from 32,393 to 30,888, while the number of children potentially needing child care increased from 80,460 to 89,900. In 2014, the total licensed capacity was 32,763 and the number of children potentially needing child care was 87,854. Child Care Aware estimates the number of children potentially needing child care to grow by 19 percent from 2013 to 2025.

According to Child Care Aware reports, child care average wages are among the lowest in comparison to other job sectors in North Dakota, with 96 percent of all workers in the state having an hourly wage higher than child care workers. Between 2006 and 2013, the average wage for child care workers increased less than 4 percent. In 2013, 4,821 individuals were employed in the child care industry. It is expected another 2,702 more employees will be needed in the child care industry by 2015 and an additional 1,302 employees will be needed by 2025.

Child Care Aware reported the average annual cost of child care for a child up to 17 months of age increased from $6,676 to $6,822 in family and group child care and decreased from $8,318 to $8,211 in a child care center between 2013 and 2014; the average annual cost of child care for a child 18 to 35 months increased from $6,515 to $6,653 in a family and group child care and decreased from $8,013 to $7,915 in a child care center; and the average annual cost of child care for a child ages 3 to 5 years increased from $6,383 to $6,534 in a family and group child care and increased from $7,373 to $7,507 in a child care center.

A representative of Child Care Aware provided the committee with information indicating every dollar invested in early childhood education produces a 7 to 10 percent return. Because 90 percent of a child's brain development occurs before the child enters kindergarten, representatives of Child Care Aware and the Department of Human Services provided the committee with information regarding the Bright and Early program. The Bright and Early program began in the state as a pilot program in Cass County and was implemented statewide in 2014. Under the program, incentives are provided to child care providers to progress through ratings steps to help providers increase quality of care. In addition to the $1 million the 2013 Legislative Assembly provided to the Department of Human Services for incentives, the department has used other funds to expand the program and allow movement to the first two steps of the four-step program.

Department of Human Services

In addition to reporting on the Bright and Early program implementation and expansion, representatives of the Department of Human Services reported to the committee regarding expansion of the eligibility of the child care assistance program and regulation and licensing of child care providers.

The 2013 Legislative Assembly provided an additional contingent appropriation of $2.5 million during the 2013-15 biennium to supplement federal funds available for the child care assistance program to expand eligibility from families at 50 percent of the median income of the state to families at up to 85 percent of the median income. There was discussion regarding the purpose of the change in the eligibility requirements. Representatives of the department testified the primary purpose was to bring more children into child care with the added benefit of possibly increasing wages for child care workers. A representative of Child Care Aware suggested the increase in eligibility was largely intended to allow providers to raise child care rates, which would provide additional funds to increase worker wages. However, it was suggested the change in eligibility has not resulted in increased salaries.

Representatives of the department reported the entire contingent appropriation would be spent before the end of the biennium. Projections provided by representatives of the department indicated the child care assistance program may be approximately $700,000 short by the end of the biennium.

Representatives of the department provided the committee with information regarding the licensing of child care providers. The department, in collaboration with Child Care Aware and the Department of Commerce, produced a video and other materials intended to promote child care as a business and to help potential child care providers learn how to start a child care business. In addition, the department has worked with Child Care Aware to offer free training, consultation, and financial incentives for home child care providers and child care centers.

In response to concerns expressed by members of the committee, representatives of the department explained that many of the regulatory requirements often cited as impediments to licensing of child care providers are related to federal laws and local ordinances. The committee was informed inconsistency in local ordinances frequently causes frustrations for providers. Local ordinances relating to the number of children allowed in a facility and the amount of space required may be more stringent than state laws and rules. In addition, fire inspections are conducted locally and the local jurisdictions may establish licensing and inspection fees. Concerns also were expressed with respect to potential federal rules that may become effective, including the impact of additional background check and fingerprint requirements for child care workers.

Department of Public Instruction

The committee received a report from a representative of the Department of Public Instruction regarding early childhood education. The committee was informed the department had approved 51 school districts for providing prekindergarten programs. Thirteen school districts have utilized Title I funds to support prekindergarten. The department adopted prekindergarten standards in 2013 and provides professional development assistance to align curriculum and assessment to the prekindergarten standards. The department is part of a 10-state consortium to assess prekindergarten to help guide instruction and provide students and teachers tools to meet or exceed standards across multiple domains of development.

Department of Commerce

The committee received a report from a representative of the Department of Commerce regarding child care grants authorized under Senate Bill No. 2014 (2013). According to the report, representatives of the department worked with Child Care Aware and the Department of Human Services to develop the grant guidelines. Senate Bill No. 2014 appropriated $2.6 million for the program, with the maximum grant award amount limited to $187,000 and a matching funding requirement of one dollar for each three dollars of grant funds. By September 2013, the department had obligated the entire amount available for grants. Priority was given to child care facilities proposing to increase infant and toddler capacity and to applicants in communities in which child care demand was greatest in relation to capacity.

The department received 78 applications, requesting $4,952,346 in funding. Grants were awarded to 22 applicants, with an anticipated increase in child care capacity of 1,100.

Additional Reports

The committee received testimony from economic development officials regarding the need for child care throughout the state as the economy of the state continues to grow. Concerns were expressed regarding the ability of employers to attract employees due to the lack of child care services. Although there appears to be interest in establishing onsite child care at various businesses, the committee was informed very little progress has been made in that respect, in part due to space and potential liability issues. The committee also was informed by economic development officials that attempts have been made to attract large-scale day care facilities in different cities, but those efforts have not been successful.

The committee received testimony from day care providers indicating day care centers have experienced difficulty in attracting and retaining employees. Despite having long waiting lists of children in need of care, day care centers have been limited in the ability to expand due to space needs and the cost of operating the businesses.

Conclusion

The committee makes no recommendation with respect to its study of child care.

REPORTS

Department of Commerce

The committee accepted the report of the Department of Commerce regarding the status of the program to establish and administer an unmanned aircraft systems test site in cooperation with the University of North Dakota, the Aeronautics Commission, the Adjutant General, and private parties appointed by the Governor as required by Section 54-60-28. Representatives of the Department of Commerce reported that on December 30, 2013, the state was chosen as one of the first six unmanned aircraft systems test sites. According to the report, the state has invested over $14 million through the Centers of Excellence and other programs to advance the unmanned aircraft systems industry in the state. Through executive order, the Governor created the Northern Plains Unmanned Systems Authority, which was funded through legislative appropriations. The Lieutenant Governor chairs the authority which also consists of representatives from the University of North Dakota, North Dakota State University, the Aeronautics Commission, the Department of Commerce, the Adjutant General, and the North Dakota Aviation Council. The committee was informed the test site was the first of the six test sites to be activated. The primary purpose of the test site is to gather information the Federal Aviation Administration will use in developing policies, procedures, and standards to govern the use of unmanned aircraft systems.

In addition to the report from the Department of Commerce, the committee received reports from several representatives of entities involved with unmanned aircraft system development in the Grand Forks area. The committee received information regarding the Grand Sky Initiative and the development of an enhanced use lease agreement with the Grand Forks Air Force Base to create a partnership with the Air Force and allow the use of property on the Air Force Base for commercial development related to the unmanned aircraft system industry. The committee also toured the facilities of the Grand Forks Air Force Base and received reports regarding the potential uses of the base property.

Emergency Services Communication Coordinating Committee

The committee accepted a report from representatives of the Emergency Services Communications Coordinating Committee regarding the use of the assessed communications services fee revenue as required by Section 57-40.6-12. The report indicated the number of 911 calls received through the emergency communications systems increased by 32 percent during the last 2 years and since tracking of calls began in 2005, the volume of calls has increased by 140 percent. However, since 2005, the revenue generated to support the system increased by only 30 percent and increased by 5 percent over the last 2 years. According to the report, 13 counties and 1 city increased 911 fees from $1 to the maximum fee allowed, $1.50. In an additional 9 counties, voters will vote whether to increase the 911 fees in the 2014 general election.

The report indicated deployment of Next Generation 911 began in the spring of 2014. Next Generation 911 will support newer forms of communication such as text messaging, video, photographs, and vehicle telematics. The report stated evaluation of public safety answering points concluded the public safety answering points are largely in compliance with the operating standards and guidelines and the fee revenue is being used in compliance with the expenditure guidelines.

The report included recommendations to amend statutory provisions to address the transition to Next Generation 911 and to more clearly identify the scope of the emergency services communications system as a two-part system implemented and maintained for the purposes of public safety. Although committee members generally agreed with the recommendations contained in the report, the committee did not consider a bill draft to implement the recommendations because the report was submitted to the committee at the last meeting of the interim.

Secretary of State

The committee accepted a report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2015, as required by Section 50 of 2013 House Bill No. 1136 and Section 42 of 2013 House Bill No. 1015.

Economic Development Foundation

The committee accepted a report from representatives of the North Dakota Economic Development Foundation regarding progress made toward recommendations provided as part of the 2020 and Beyond Initiative as required by

Section 36 of 2013 Senate Bill No. 2018. The report indicated North Dakota 2020 and Beyond was launched as a joint initiative with the Governor, the Greater North Dakota Chamber, and the North Dakota Economic Development Foundation as directed by the 2011 Legislative Assembly. According to the report, ongoing efforts of the initiative are led by the North Dakota Economic Development Foundation. In 2013, the report stated the Economic Development Foundation identified an area in each of the 2020 and Beyond recommendations that needed more focused efforts, including people, with a focus on education to improve the state to the best in the nation in education of its citizens; places, with a focus on technology to achieve the goal of building technology infrastructure to ensure the state is a model for connectivity; and opportunities, with a focus on workforce development to meet the needs of the expanding economy of the state. The foundation brought stakeholders together to explore opportunities in each of these areas and to define recommendations to help achieve success.

Housing Finance Agency Inventory

The committee received reports from a representative of the Housing Finance Agency regarding government programs providing residential and commercial development assistance as required by Section 2 of 2013 Senate Bill No. 2339. A representative of the Housing Finance Agency reported that representatives of the agency worked with representatives of the Department of Commerce, the Bank of North Dakota, the North Dakota League of Cities, the Economic Development Association of North Dakota, the United States Department of Agriculture Rural Development Agency, the United States Department of Housing and Urban Development, and the Small Business Administration to compile the requested information for the inventory.

The report stated that local assistance programs generally include four basic types--rehabilitation, local match of flex PACE funds, reduced price of land, and property tax reductions. According to the report, the state-funded housing incentive fund, administered by the Housing Finance Agency, and the flex PACE program, administered by the Bank of North Dakota, have been successful in incentivizing affordable housing production. In addition, the Housing Finance Agency administers the construction loan guarantee program, the rural housing development loan program, the rehab accessibility program, Helping Housing Across North Dakota, and the rural rehab loan program.

The report included within the inventory federal programs such as the low-income housing tax credit program, the HOME investment partnerships program, and community development block grants. In addition, federal funds are available through the low-income weatherization assistance program, rural rental housing direct and guaranteed loans, and the housing preservation grant program.

EDUCATION FUNDING COMMITTEE

The Education Funding Committee was assigned one study. Section 58 of 2013 House Bill No. 1013 directed a study of state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education in this state.

The Legislative Management also assigned to the committee the responsibility to receive reports regarding the financial condition of schools, school district employee compensation, the status of the statewide longitudinal data system plan, requests for and waivers of accreditation rules, requests for and waivers of statutory requirements governing instructional time for high school courses, student scores on recent statewide tests of reading and mathematics, and the development, delivery, and administration of comprehensive early childhood care and early childhood education in this state.

Committee members were Senators Tim Flakoll (Chairman), Howard C. Anderson Jr., Joan Heckaman, Richard Marcellais, Nicole Poolman, Donald Schaible and Representatives Mark A. Dosch, Jessica Haak, Patrick Hatlestad, Bob Hunskor, Jerry Kelsh, Ben Koppelman, Lisa Meier, David Monson, Mike Nathe, Karen M. Rohr, David S. Rust, Mark Sanford, and Margaret Wall. Representative John Wall served as a member of the committee until his death in July 2014.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

STATE-LEVEL AND LOCAL-LEVEL RESPONSIBILITY FOR THE EQUITABLE AND ADEQUATE FUNDING OF ELEMENTARY AND SECONDARY EDUCATION

Background

Constitutional Requirements

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.

Section 1 has been unchanged since its 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, 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."

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."

History of Education Funding - The First Fifty Years

Since the 1930s, the Legislative Assembly has attempted to meet its constitutional directives by providing some level of financial assistance to school districts. In the late 1950s, the Legislative Assembly initiated a foundation aid program that was based on a uniform 21-mill county levy and a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources.

For several years, the foundation aid program remained essentially unchanged. However, federal and state courts were beginning to address issues of spending levels for elementary and secondary education and whether those levels should be dependent upon the wealth of the school district in which a student resides. The Legislative

Assembly, in an attempt to preempt such issues in North Dakota, responded by amending the foundation aid program in a way that evidenced a higher level of sophistication. Per student payments were more than doubled and weighting factors that recognized four classes of high schools were made part of the education formula. By the latter years of the 1970s, a new funding category encompassing seventh and eighth grade students had been created and fiscal protections were instituted for school districts that experienced declining enrollment. In 1979 the Legislative Assembly appropriated $208.4 million for the foundation aid program and added an additional $1 million to pay for free public kindergartens.

The next major development affecting education finance occurred with the approval of Initiated Measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated Measure No. 6 also provided for a tax credit that made the 21-mill county levy inapplicable to all but the owners of extremely high-value properties. The Legislative Assembly eliminated the 21-mill county levy and increased state aid to compensate for the revenues that would otherwise have been derived from the levy.

Discussions continued on issues of funding inequities among school districts. Districts spending similar amounts per student and having similarly assessed valuations were not levying similar amounts in property taxes to raise the local portion of education dollars. It was alleged that the system encouraged some districts to levy much smaller amounts than their spending levels and assessed valuations would seem to justify. Both the Legislative Assembly and legislative interim committees continued to evaluate the impact of weighting factors, considered the effects of increasing the mill levy equalization factor, and explored the excess mill levy grant concept. While individuals and organizations articulated the need to alter the state's education funding system, little agreement was reached beyond recommending increases in the level of per student aid.

Litigation

In 1989 several school districts and parents joined in suing the state, for the purpose of having North Dakota's system of public school financing declared unconstitutional. 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 and that those disparities were directly and unconstitutionally based upon property wealth. Four years later, a district court declared the state's system of education financing 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 decision was appealed and in January 1994, by a one vote margin, the North Dakota Supreme Court did not uphold the lower court's ruling. The Supreme Court indicated areas that were in need of legislative attention but, unlike courts in other states, it did not mandate specific legislative action.

Within a decade after the court decision, the Legislative Assembly's commitment to education funding had exceeded $665 million. In 2003 the state was providing educational services to 99,174 public school students--50 percent of whom were being educated in the state's eight largest school districts. The remaining students were distributed across 205 other districts. Best estimates indicated that by 2013, the number of enrolled students could fall below 90,000. Against a backdrop of declining student numbers, rising expectations for services, and a belief that the available resources were both insufficient and inequitably distributed, another lawsuit was brought against the state by the school districts of Williston, Devils Lake, Grafton, Hatton, Larimore, Surrey, Thompson, United, and Valley City.

Williston Public School District No. 1 v. State of North Dakota did not go to trial. Instead, the plaintiffs and the defendants entered a settlement agreement in which it was stated 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.

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 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 a new funding formula embodied in 2007 Senate Bill No. 2200.

Education Finance - 2007 Legislative Session

2007 Senate Bill No. 2200 consolidated education funding that had been previously assigned to a variety of 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. The new formula also factored in the variable cost of providing services and programs in small, medium, and large school districts.

To ensure a relatively consequence-free transition to the new formula, provisions were inserted to require a minimum percentage growth in the per student payment and to cap a potential windfall in a district's per student payment. The mill levy equalization factor 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 that accommodated 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 committed to pay any amount over 4.5 percent of the average cost per student for the most costly 1 percent of special education students statewide.

The Legislative Assembly 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. 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 level for elementary and secondary education was increased by more than $92 million over the previous biennium.

2007-08 Interim - *Funding Schools Adequately in North Dakota: Resources to Double Student Performance*

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 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 would double student performance on state tests over 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, and that 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 were centered around prototypical schools having 432 students in the elementary grades, 450 students in the middle grades, and 600 students at the high school level. Among the recommendations were the following:

- Class sizes for core courses (English language arts, mathematics, science, social studies, and foreign languages) should not exceed 15 students in kindergarten through grade 3 and should not exceed 25 students in the remaining grades;
- Specialists and elective teachers (art, music, physical education, health, etc.) should constitute at least 20 percent of the core instructional staff in kindergarten through grade 8 and at least 33 percent in the remaining grades;
- Instructional coaches for professional development should number at least 1 full-time equivalent (FTE) position for every 200 students;
- Tutors to assist students struggling academically should number at least 1 FTE position per prototypical school, plus 1 FTE position for every 125 at-risk students;
- The weight applied to new English language learners should be increased to 1.0;

- Extended-day programs should be funded;
- Each district should include $25 per student in average daily membership to cover the cost of increasing services to gifted and talented students;
- Substitute teachers should be funded by the state at the rate of 10 days per regular teacher;
- Guidance counselors should be provided at the rate of one for each prototypical elementary school and at the rate of one for every 250 students in prototypical middle schools and high schools;
- One FTE support position should be included for every 125 at-risk students and allocated according to a school's needs--i.e., social workers, nurses, psychologists, family outreach personnel, caseworkers, or additional guidance counselors;
- Two noninstructional aides should be included for each prototypical elementary school and middle school and three noninstructional aides should be included for each prototypical high school;
- One librarian should be included for each prototypical school;
- Administrative staff should include one principal for each elementary school, one principal and one half-time assistant principal for each prototypical middle school, and one principal and one assistant principal for each prototypical high school;
- Clerical staff should include two positions for each prototypical elementary school and middle school and four positions for each prototypical high school;
- Professional development days should be extended from the current 2 days to 10 days, and $100 per student should be included for the cost of training and related expenses;
- Technology funding should be included at the rate of $250 per student to cover the cost of computers, software, hardware, and supplies;
- Student activity funding should be included at the rate of $200 per elementary student and $250 per middle school and high school student;
- Central office personnel and service funding 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.

2009 Legislative Session

After reviewing the Picus report, the North Dakota Commission on Education Improvement made its recommendations to the North Dakota Legislative Assembly. 2009 House Bill No. 1400 was the vehicle by which many of the policy recommendations were enacted, and 2009 House Bill No. 1013 contained many of the appropriations. The following is a summary of those recommendations and outcomes.

Commission Recommendations	Outcome
Provide education funding "adequacy" by increasing the appropriation for elementary and secondary education by $100 million	Enacted
Provide $10 million for deferred maintenance	$85.6 million was appropriated for one-time maintenance grants
Increase the special education weighting factor from .067 to .07	Enacted
Establish an "at-risk" factor of .05	A factor of .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

Commission Recommendations	Outcome
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
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 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

Commission Recommendations	Outcome
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	Not enacted
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

2009-10 Interim

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 statutorily changed 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 previously included representatives of the North Dakota Council of Educational Leaders, the North Dakota Education Association, and the North Dakota School Boards Association, was expanded to now include the President of a private four-year institution of higher education, the owner or manager of a business, and the Commissioner of Higher Education.

Although the statutory charge of the commission was still to address educational adequacy, the equitable distribution of state education funds, and the allocation of funding responsibility, the commission approached its third and final effort with a focus on fine-tuning the education formula that had been enacted during the two prior legislative sessions.

2011 Legislative Session

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

Pursuit of Property Tax Relief

While educational equity and adequacy continued to be dominant legislative concerns, additional time and attention was now being given to the populace's growing desire for property tax relief. In the 2007 session, the Legislative Assembly enacted property tax relief through the use of income tax credits and transferred $115 million from the permanent oil tax trust fund to the state general fund in order to offset anticipated revenue losses resulting from the credits.

Due to inherent administrative difficulties resulting from the use of income tax credits for property tax relief, the 2009 Legislative Assembly instituted a statewide system of property tax relief through state-funded school district mill levy reductions. The biennial cost of the program was $295 million. By 2011, the program's price tag had risen to $341.7 million and there still existed concerns about the overall effectiveness of the mill levy reduction grant program as a mechanism for property tax relief, concerns about the program's potential to result in the rededication of locally generated revenues to other purposes, and concerns about long-term sustainability.

A New Education Funding Formula - 2013 House Bill No. 1013

When the 2013 Legislative Assembly convened, the principal education funding package placed before it again came with the imprimatur of the Governor. Introduced as House Bill No. 1319, the new proposal for funding elementary and secondary education was defeated on the morning of the session's 80th and final day. Later that evening, the content was attached as an amendment to House Bill No. 1013 and enacted.

The amendments added to House Bill No. 1013 provided for a district's weighted student units to be multiplied by $8,810 during the first year of the biennium and $9,092 during the second year. Minimum and maximum payment levels were established using a statutorily defined baseline funding level.

Until the enactment of House Bill No. 1013, school districts had the authority to levy mills for a plethora of purposes other than the general fund. These included board and lodging for high school students; the teachers' retirement fund; tuition; special education; an insurance reserve fund; final judgments; Social Security; the rental or leasing of real property; unemployment compensation benefits; asbestos removal; remodeling required by the Americans with Disabilities Act; remodeling required by the State Fire Marshal; alternative education; career and technical education; schoolbuses; school library services; two-way communications; kindergartens; interdistrict cooperative agreements; and the establishment, maintenance, and operation of a public recreation system.

House Bill No. 1013 consolidated the various levy authorities and provided that a school district could levy:

- A tax not exceeding the amount in dollars that the school district levied for the prior year, plus 12 percent, up to a levy of 70 mills on the taxable valuation of the district, for any purpose related to the provision of educational services;
- No more than 12 mills on the taxable valuation of the district, for miscellaneous purposes and expenses;
- No more than three mills on the taxable valuation of the district for deposit into a special reserve fund; and
- No more than the number of mills necessary, on the taxable valuation of the district, for the payment of tuition.

The limitations listed above were not extended to mills levied for a building fund or for the payment of the principal and interest on bonded debt of the district. As a precondition of receiving state aid, school districts that were authorized to maintain excess levies before the 2009 taxable year were required to reduce their levies by 115 mills and districts that were authorized to maintain excess levies during or after the 2009 taxable year were required to reduce their levies by 40 mills.

The dollar amounts by which a district's weighted student units were to be multiplied, in order to arrive at a funding level for the 2013-15 biennium ($8,810 during the first year of the biennium and $9,092 during the second year), were derived through the application of an inflationary increase to the "adequate" funding level that Picus had proffered, as part of its final report to the North Dakota Commission on Education Improvement in 2008. Given the intervening five years and changes in the state's economic and demographic circumstances, the Legislative Assembly deemed it appropriate to seek a review and clarification of state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education.

To meet its study directive, the interim Education Funding Committee asked Picus to review its earlier efforts and conduct a recalibration using an evidence-based model and the most recent data available.

2013-15 Interim - *Recalibrating North Dakota's Per Student Number for the School Foundation Program*

Evidence-Based Model

The main principle behind the state's school funding formula, as articulated by Picus, is that every elementary and secondary student in North Dakota should have a base of financial support that allows the student's school district to provide a quality education. This should be the case regardless of where the student lives or how much taxable valuation is available to the school district.

To determine what that level of financial support should be, Picus uses an evidence-based model that relies on reviews of research pertaining to the effects of major elements or strategies on student achievement and studies of schools and school districts that have dramatically improved student performance over a period of four to six years. Picus' premise is that if school districts expend the recommended amounts to support the various student improvement strategies embedded in the model, the result will be large improvements in the academic achievements of their students.

Picus' 10 strategies for student improvement are:

- Analysis of student data for purposes of understanding performance issues and achievement gaps;
- Setting high goals with respect to that percentage of students who are able to achieve proficiency on state assessments;
- Utilization of a rigorous curriculum and implementation of instructional practices that deliver the curriculum;
- Significant investment in teacher training, including the provision of intensive summer institutes and the employment of instructional coaches;
- Provision of extra help for struggling students through individual or small group tutoring, extended-day programming, summer school, and language development for all English language learners;
- Limitations of 15 students per class, at least in kindergarten through grade 3;
- Restructuring of the school day to allow for more effective instructional delivery through the use of multiage elementary classrooms, block scheduling, and double periods, together with protection of instructional time for core subjects such as reading and mathematics;
- Employment of strong leaders who utilize data driven decisionmaking and focus on instructional improvement;
- Professional school cultures that allow for ongoing discussions regarding instruction and instructional improvement and that encourage teachers to take responsibility for the performance of their students; and
- Use of external professionals to provide staff training, assist in the adoption and implementation of research-based curricula, and work with regional education associations and the state governing agency.

In addition to advocating the use of 10 strategies for student improvement, the evidence-based model articulates the resources needed by prototypical elementary, middle, and high schools, as well as by prototypical districts. A prototypical elementary school consists of 450 students in kindergarten through grade 5. A prototypical middle school consists of 450 students in grades 6 through 8 and a prototypical high school consists of 600 students in grades 9 through 12. A prototypical district of 3,900 is used to identify district resources. The model must utilize specific sizes for the prototypes to indicate the relative level of resources in the schools. Although the model is based on such prototypes, Picus underlines that this configuration in no way implies that North Dakota should adopt any new policy on school or district size.

Picus Report - General Recommendations

Full-day kindergarten	Research shows that full-day kindergarten, particularly for students from low-income backgrounds, has significant, positive effects on student learning in the early elementary grades. Kindergarten students are therefore counted as 1.0 students for the state aid formula. The staff FTEs that these students generate are added to the core teacher counts and then used to generate elective teacher positions, professional development, and other schoolwide resources. (The $7,293 figure from 2008 included this element.)
Core teachers	Core teachers are the grade-level classroom teachers in elementary schools and the mathematics, science, language arts, social studies, world language, and advanced placement teachers in middle schools and high schools. Using the prototypical school sizes, an elementary school would require 26 core teachers, a middle school would require 18 core teachers, and a high school would require 24 core teachers. Additional teaching staff are accounted for under other categories. (The $7,293 figure from 2008 included this element.)
Elective teachers	In addition to the core subjects, schools need to provide a solid well-rounded curriculum that includes art, music, library skills, career-technical courses, and physical education. Both core teachers and elective teachers need time within the regular school day to work collaboratively and engage in job-embedded professional development. Providing every teacher one period a day for collaborative planning and focused professional development requires an additional 20 percent allocation for elective teachers. Using this elective staff allocation, every teacher--core and elective--would teach 5 of 6 periods during the day, and have one period for planning, preparation, and collaborative work. Resources for elective teachers are provided as a percentage of core teachers, at the rate of 20 percent for elementary teachers, 20 percent for middle school teachers, and 33.3 percent for high school teachers. (The $7,293 figure from 2008 included this element.)

Instructional coaches	Instructional coaches coordinate instructional programming and provide the critical ongoing coaching and mentoring that the professional development literature shows is necessary for teachers to improve their instructional practices. The recommended ratio is one instructional coach for every 200 students. (The $7,293 figure from 2008 included this element.)
Tutors	The most powerful and effective extra help strategy to enable struggling students to meet state standards is individual tutoring provided by licensed teachers. Resources are provided for one licensed teacher-tutor position for every prototypical school, plus one such position for every 125 at-risk students. Individuals in these positions are also provided with additional days for professional development and substitute days. (The $7,293 figure from 2008 included this element.)
Extended-day programs	Struggling students at the elementary, middle, and high school levels are likely to benefit from afterschool or extended-day programs, even if receiving Tier 2 interventions during the regular school day. Extended-day programs are created to provide academic support, as well as to provide a safe environment for children and adolescents, after the school day ends. Resources are provided for one teacher position for every 30 at-risk students, or 3.33 FTEs per 100 such students. The position is paid at the rate of 25 percent of the position's annual salary--i.e. sufficient to pay a teacher for a two-hour extended-day program, five days per week. This formula equates to one teacher position for every 120 students who are eligible for free or reduced lunches. These resources could be used for a different mix of teachers and other noncertified staff, with teachers providing at least one hour of homework help or afterschool tutoring. These positions are included in the funding estimates for professional development days and substitute days.
Summer school	Many students need extra instructional time to achieve proficiency. Summer school programs provide struggling students with the additional time and help they need to meet standards and earn academic promotion from grade to grade. Resources are provided for one teacher position for every 30 at-risk students, or 3.33 FTEs per 100 such students. The position is paid at the rate of 25 percent of the position's annual salary and includes time for planning, preparation, and collaborative work. This formula equates to one teacher position for every 120 students who are economically disadvantaged. These positions are included in the funding estimates for professional development days and substitute days.
English language learners	English language learners need assistance to learn English, in addition to instruction in the regular content classes. This can require some combination of small classes, English as a second language classes, professional development for teachers to help them teach sheltered English classes, and reception centers for districts with large numbers of English language learners who arrive throughout the school year. Resources are provided for one teacher position for every 100 English language learners. Students who are both English language learners and at risk, as defined by eligibility for free or reduced lunches, are able to qualify for multiple resources, including tutoring, extended-day programs, and summer school, in addition to the per student payment. These positions are included in the funding estimates for professional development days and substitute days.
Special education	Providing appropriate educational services for students with disabilities, while containing costs and avoiding over-identification, presents several challenges. Many mild and moderate disabilities, particularly those associated with students learning to read, are correctable through strategic early interventions, including effective core instruction and individual tutoring. Using a census approach to funding special education services for students with disabilities in the high incidence - lower cost categories, resources are provided for one teacher and one aide position for every 150 regular education students. This results in three teachers and three aides for each prototypical elementary and middle school, and four teachers and four aides for each prototypical high school. (The $7,293 figure from 2008 included this element.) Resources are also provided for state reimbursement of 100 percent of the costs for children with severe disabilities. This generally would cover the top 2 percent of students with disabilities, less federal Title VI(b) funds that are provided for these students.

Alternative schools	A small number of students have difficulty learning in the traditional school environment. These students tend to have some combination of significant behavioral, social, and emotional issues, often including alcohol or drug addictions. Such students often do much better in small alternative learning environments. Resources are provided for one assistant principal position plus one teacher position for every 7 FTE students in an alternative school program. In addition, resources are provided for instructional materials, technology, and central office and maintenance and operations.
Gifted and talented students	Developing the potential of gifted and talented students includes efforts to discover the hidden talents of low-income students and culturally diverse students. It also requires curricular materials designed specifically to meet the needs of gifted and talented students, accelerated curricula, and special training so that teachers can work effectively with such students. Resources are provided at the rate of $25 per regular education student. (The $7,293 figure from 2008 included this element.)
Substitute teachers	Resources for substitute teachers are included at the rate of 5 percent of all teacher and instructional coach positions. This provides approximately 10 days per teacher, based on a 192-day teacher contract. (The $7,293 figure from 2008 included 10 days, but at a rate of $125 per day, which was below the average daily rate.)
Student support and family outreach	Schools need a student support and family outreach strategy. In fact, the comprehensiveness of the strategy is directly related to the degree of disadvantage within the student body. Resources are provided for one guidance counselor for every 450 elementary school students, one guidance counselor for every 250 students in grades six through 12, and one nurse for every 750 students. In addition, resources are provided for one student support position for every 125 at-risk students. These staffing provisions enable districts and schools to allocate guidance counselors, nurses, psychologists, and social workers, in a way that best addresses the needs of their students. (The $7,293 figure from 2008 included this element for each prototypical school. The nurse position is an addition.)
Supervisory aides	All schools need staff for responsibilities that include lunch duty, before and after school playground supervision, bus duty, etc. Covering these duties generally requires an allocation of supervisory aides at a rate of approximately 2 FTE positions for a school of 400 to 500 students. Resources are provided for 1 FTE supervisory aide for every 225 elementary and middle school students and 1 FTE supervisory aide for every 200 high school students. (The $7,293 figure from 2008 included this element.)
Librarians	Most schools have a library, and the staff resources must be sufficient to operate the library and to incorporate appropriate technologies into the library system. In addition, some elementary librarians could teach students for some of the day as part of special subject offerings. Resources are provided for one librarian for every prototypical elementary school, middle school, and high school. (The $7,293 figure from 2008 included this element.)
Principals and assistant principals	Resources are provided for one principal for each prototypical elementary school, middle school, and high school and for one assistant principal for every 900 middle school students and every 600 high school students. (The $7,293 figure from 2008 included an additional 0.5 assistant principal position for middle schools.)
School site secretarial staff	Every school site needs secretarial staff for clerical and administrative services. Resources are provided for 2 FTE clerical positions for every prototypical elementary and middle school and 3 FTE clerical positions for every prototypical high school. (The $7,293 figure from 2008 included this element.)
Professional development	Improving teacher effectiveness through high quality professional development is arguably as important as all of the other resource strategies that have been identified. Effective professional development should be school-based, job-embedded, and focused on the curriculum being taught, rather than structured as a one-day workshop. Resources are provided for 10 days of student-free time for training, which is an increase of approximately 8 days. Resources are provided for training at the rate of $100 per student. These resources are in addition to those for instructional coaches and to those that provide planning and collaborative time periods for teachers. (The $7,293 figure from 2008 included these elements.)

Technology	Schools need to embed technology in instructional programs and school management strategies. Many states already require that students be technologically proficient and that they take some online courses, as a prerequisite to high school graduation. Today, there are multiple online education options--from state-run virtual schools to those created by private sector companies. "Blended" instructional models have also emerged. These programs infuse technology and online teaching into regular instruction, provide more one-on-one assistance to students, and allow teachers to assume more of a coaching role. While these technology systems work very well for many students, infusing technology into the curriculum does have associated costs for computer hardware, networking equipment, software, training, and maintenance and repair. Resources are provided at the rate of $250 per K-12 student. (The $7,293 figure from 2008 included these elements.)
Instructional materials and formative assessments	The type and cost of textbooks and other instructional materials differ across elementary, middle school, and high school levels. Textbooks are more complex and more expensive in the upper grades. The need for up-to-date textbooks and instructional materials is paramount. Newer materials contain more accurate information and incorporate the most contemporary pedagogical approaches. Adoption cycles allow districts to upgrade their texts on an ongoing basis instead of allowing these expenditures to be indefinitely postponed. Resources are included for library texts and electronic services at the rate of $20 for each elementary student, $20 for each middle school student, and $25 for each high school student. Resources are included for textbooks and consumables at the rate of $120 for each elementary and middle school student, and $150 for each high school student. Resources for formative assessments are included at the rate of $30 per student. Resources are also included at the rate of $10 per student for supplemental instructional and other materials utilized in tutoring programs, extended-day programs, summer programs, and English language learner programs. (The $7,293 figure from 2008 included these elements.)
Student activities	Elementary, middle, and high schools typically provide an array of noncredit producing afterschool programs, including clubs, bands, sports, etc. Teachers supervising or coaching these activities usually receive small stipends for these extra duties. Resources for student activities are included at the rate of $200 for each elementary and middle school student and $250 for each high school student. (The $7,293 figure from 2008 included these elements.)
Central office staffing	Although the research basis for staffing school district central offices is relatively limited, there are certain presumed staffing ratios and expenses associated with the superintendent's office; the business office; the area of curriculum and support--i.e., the assistant superintendent for instruction, the director of student services, the director of special education, and the director of assessments and evaluation; the area of technology, including the director of technology and computer technicians; and the director of operations and maintenance. Secretarial support is also required for the aforementioned positions or areas. Resources are included at the rate of $644 per student. (The $7,293 figure from 2008 included these elements.)
Operations and maintenance	Operations and maintenance includes the cost of custodians, maintenance staff, and groundskeepers, as well as the cost of materials and supplies to support these individuals and their functions. The estimate for operations and maintenance was $757 per student. Because this differed substantially from the actual 2012-13 costs, resources were provided at the actual rate of $1,167 per student. (The $7,293 figure from 2008 included an operations and maintenance figure derived from actual expenditures in 2006-07.)

Additional Considerations

To account for variations in the calculation of fringe benefit rates that existed during the original study in 2008 and to account for the mandate that school districts pay a higher percentage of salaries to fund teacher pensions, Picus opted to build in a cost-based fringe benefit rate that included:

- 7.65 percent for FICA and Medicare;
- 2.35 percent for unemployment, disability, and miscellaneous issues;
- 10.75 percent for the district portion of the state pension funding for 2013-14, which represents an increase from the 8.75 percent used in 2008; and

- 12.75 percent for the district portion of the state pension funding for 2014-15, to accommodate the mandated state increase for that year.

The determination of costs associated with school district supported health care benefits became complex because some districts are self-insured. Other districts have differing policies for single employees, for those seeking to cover only themselves and a spouse, and for those seeking family coverage. Some districts include dental benefits, some include vision benefits, and some include both dental and vision benefits. Ultimately, the approach taken involved superimposing the policy parameters for health care benefits provided to state government employees.

Fringe benefit rates were therefore calculated at 67 percent for classified staff and at 45 percent for professional staff. Because those rates reflected 2013-14 expenditures, Picus suggested that both figures should be increased by an additional two percentage points for 2014-15, to accommodate known increases.

For salaries, Picus opted to utilize the actual 2012-13 levels as part of the recalibration process, even though such levels were less than what would have been achieved using various inflationary indices. However, it was stated that, given the information school districts and the state already had about health care cost increases and the recent trending of North Dakota teacher salaries across the state, it appeared both cost levels would exceed the consumer price index for 2014-15.

Recalibrated Payment Levels - Picus Recommendations

Based on all available information and assumptions, Picus recommended that the recalibrated payments should be increased from the 2013-15 levels of $8,810 and $9,092 to $9,347 and $9,442. The composition of the recalibrated payments is reflected as follows:

Programmatic Element	Dollars Per Student
Core teachers	$3,375
Elective teachers	790
Instructional coaches	398
Counselors	245
Nurses	93
Core tutors (tier 2 interventions)	144
Special education teachers	467
Special education aides	209
Supervisory aides	145
Substitute teachers	256
Librarians	147
Principals	231
Assistant principals	74
School secretaries	197
Dollar per student resources	
Professional development training	100
Gifted and talented services	25
Technology	250
Instructional materials	149
Short cycle/formative assessments	30
Student activities	213
Central office	644
Operations and maintenance	1,167
Total (may not equal total of all elements due to rounding)	$9,347

Recalibrated Weighting Factors - Picus Recommendations

Based on all available information and assumptions, Picus recommended that the recalibrated weighting factors should be those reflected as follows:

Purpose	Recommended Factor
At-risk students - Use unduplicated count of students eligible for free or reduced lunch and English language learners	Increase to 0.20
English language learners	0.07 for English language learners at Levels I, II, and III if the at-risk factor of 0.20 is adopted. Otherwise, retain the current factors of 0.30, 0.20, and 0.07
Summer school	Retain current factor of 0.60
Alternative middle schools	Retain current factor of 0.15
Alternative high schools	Retain current factor of 0.25 for high schools, but include students in grades 9-12, as well as students up to age 21

Purpose	Recommended Factor
Migrant summer school	Eliminate the current factor of 1.0 but include migrant summer students in the regular summer school program count at a factor of 0.60
Home education students	Eliminate
Cross-border attendance students	Eliminate
PowerSchool	Retain current factor of 0.003
Regional education agencies	Retain current factor of 0.002
Early childhood special education	Retain current factor of 0.17
Special education	Retain current factor of 0.082 and include the recommended special education staffing resources
Small district adjustment	Retain current school district size weighting factors, but consider increasing the factors for school districts having fewer than 125 students

School District Response to Picus Report and Recommendations

School district officials and representatives told the committee that while some of the recommendations included in the original Picus study published in 2008 were faithfully implemented, others were found not to be a "good fit" for the students or the state of North Dakota. As a group, school district officials and their representatives affirmed their commitment to doing whatever it takes to make a difference for students. They recognized the need for accountability but expressed their concern that accountability not focus on or result in placing blame on teachers and administrators for not doing their jobs. It was suggested that accountability should require "change agents that foster the intrinsic motivation of teachers and students, change agents that engage educators and students in continuous improvement in instruction and learning, change agents that inspire collective or team work, and change agents that affect all teachers and students." It was further suggested that public education in general should be driven by capacity building, rather than accountability in the form of test results and teacher evaluations; collaborative work or group solutions, rather than the promotion of individual teachers and leadership quality; quality of instruction, rather than the latest technology; and systemic strategies, rather than fragmented strategies.

Within this framework, educational leaders raised concerns that in implementing Picus' evidence-based model for student achievement, school districts would be required to eliminate a large number of individuals who teach elective courses. The committee was told that this reduction in personnel would even extend to instructional aides, special education aides, and certain core teachers. On the other hand, the committee was told, if school districts would be expected to actually increase personnel such as instructional coaches, support staff, core teachers, nurses, and supervisory aides, achieving that end would take a period of time.

One of the more significant concerns came about as a result of the recommendation for smaller class sizes, particularly at the elementary level. It was perceived that this would generate a shift in capital from the high school to the elementary level and result in exponential construction costs, due to the need for additional classrooms.

As for professional development, the committee was told that each school district should be permitted to articulate its own needs and that those needs should be met through job-embedded learning and not necessarily through a multiday summer academy or institute.

Finally, the committee was told that there is support for the funding of aides, principals and assistant principals, central office administration, and operations and maintenance, as well as for instructional coaches, tutors, substitute teachers, librarians, and secretarial staff. If determined to be appropriate and advantageous and if well-funded, there would be support for extended-day programs, summer school programs, English language learner programs, gifted and talented programming, and alternative schools.

Committee Consideration

The committee determined that it could not and would not recommend an imposition of the Picus evidence-based funding model on the school districts of this state. Philosophically, however, the committee noted that Picus presented an educational framework and a cost for delivering educational services within that framework. If that framework is not to be adopted and if there are no requirements that school districts adhere to the components of that framework, then the end result, it was said, could best be described as nothing more than a funding number plus local flexibility. The path to improved results remained nebulous for some.

Other committee members viewed the element of local flexibility as indisputably necessary to the provision of education in North Dakota, arguing that what works in a large urban school district is not necessarily that which will ensure success in a small rural school district.

Committee Recommendation

The committee recommends a Senate Bill No. 2031 relating to the funding of elementary and secondary education. The bill sets per student funding rates of $9,482 for the first year of the biennium and $9,766 for the second year. The rate of $9,482 was derived using the Picus recommendation of $9,442, subtracting $236, which represents the eight days of professional development that Picus had recommended, but which the committee did not require, and then increasing the remainder by 3 percent to arrive at $9,482. A second year increase of 3 percent brings the total to $9,766.

The bill makes available another $125 million for school construction, in addition to the $50 million that is currently loaned from the coal development trust fund and the $150 million that is currently loaned from the strategic investment and improvements fund. If new requests exceed $125 million, the bill provides for an additional $100 million to be made available. The source for the contingent funding is also the strategic investment and improvements fund.

The bill adds a third day of professional development, beginning with the 2016-17 school year. While the first two days of professional development are included within the funding formula, $22 million is made available for additional payments to those school districts that offer a third day of professional development, beginning with the 2015-16 school year. The payment is provided through a factor of 0.01. The fourth and fifth days would each generate factors of 0.005. Payments for professional development days are to be forwarded only upon the activities being approved by the Superintendent of Public Instruction.

The bill increases the factors for English language learners to 0.40 and 0.27, from the current 0.30 and 0.20, for Levels I and II. The factor for Level III remains at 0.07. The impact to the formula is estimated to be $770,000.

Recognizing that certain school districts are required to address the needs of a disproportionate number of English language learners, the bill provides for a $2.5 million grant. The grant is limited to the six school districts that have the largest number of Level I and Level II English language learners. Money provided through the grant must be used to enhance the services provided to such students through the hiring of additional teachers, interpreters, and social workers and through the provision of other ancillary support services approved by the Superintendent of Public Instruction.

The bill funds a percentage of at-risk students in kindergarten through grade 3 using a factor of 0.20 and a percentage of at-risk students in grades 4 through 12 using a factor of 0.025. This creates a $45 million impact. Increasing the funding level for regional education associations from 0.002 to 0.0022 comes at a cost of approximately $425,000. Alternative middle school funding is retained using a factor of 0.15. Alternative high school funding is retained using a factor of 0.25, with the clarification that eligibility extends to all students in grades 9 through 12, not just to those who have reached the age of 16.

When totaled, the recommended commitment to elementary and secondary education exceeds $2,038,000,000. The committee acknowledged that while this is the largest education funding amount in the history of the state, it is designed to focus resources on critical elements that improve student performance.

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, and the development, delivery, and administration of comprehensive early childhood care and early childhood education in this state. The committee also received a report from the Statewide Longitudinal Data System Committee regarding the status of the plan for a longitudinal data system.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under North Dakota Century Code Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. Section 54-35-02.4 also requires the committee 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.

Section 15-39.1-05.2 directs the Board of Trustees of the Teachers' Fund for Retirement (Board of Trustees) to report to the committee any necessary or desirable statutory changes relating to the Teachers' Fund for Retirement (TFFR), Section 15-39.1-35 requires the committee to approve terminology adopted by the Public Employees Retirement System Retirement Board (Retirement Board) for TFFR provisions to comply with applicable federal statutes or rules, Section 15-39.1-10.11 requires the 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 firefighters relief associations concerning service benefits paid under a special schedule, and Sections 39-03.1-29, 54-52-23, and 54-52.1-08.2 require the committee to approve terminology adopted by the Retirement Board to comply with federal requirements.

The Legislative Management assigned the committee the responsibility under Section 54-06-31 to receive periodic reports from the Office of Management and Budget (OMB) Human Resource Management Services (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 Legislative Management assigned the committee the responsibility under Section 54-06-32 to receive a biennial report from OMB summarizing reports of state agencies providing service awards to employees in the classified service.

The Legislative Management assigned the committee the responsibility under Section 54-06-33 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.

The Legislative Management assigned the committee the responsibility under Section 54-06-34 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.

Committee members were Senators Dick Dever (Chairman), Spencer Berry, Ralph Kilzer, Karen K. Krebsbach, David O'Connell, and Connie Triplett and Representatives Randy Boehning, Roger Brabandt, Jason Dockter, Jessica Haak, Scott Louser, Kenton Onstad, and Don Vigesaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

BACKGROUND

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, and is governed by its Board of Trustees. The State Investment Board is responsible for the investment of the trust assets, although the Board of Trustees 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, TFFR is a cost-sharing, multiple-employer public employee retirement system.

All certified teachers of a public school in the state participate in TFFR, including teachers, supervisors, principals, and administrators. Noncertified employees, such as teachers' aides, janitors, secretaries, and drivers, are not allowed to participate in TFFR. Eligible employees become members on the date of employment.

Prior to July 1, 2012, all active members contributed 7.75 percent of salary per year to TFFR. 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 increased to 11.75 percent effective July 1, 2014. The 4 percent added to the member contribution rate will remain in effect until TFFR is 100 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 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 became 12.75 percent. However, the employer contribution rate will revert to 7.75 percent when TFFR is 100 percent funded on an actuarial basis. The contribution rate will not automatically increase if the funded ratio later falls below 100 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, for purposes of determining retirement benefits, 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 and are grandfathered. Those who do not meet these criteria as of June 30, 2013, (nongrandfathered) 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 the added requirement that the member has reached 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 is 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 occur while an active or an 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 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.

Public Employees Retirement System

The Public Employees Retirement System (PERS) is governed by Chapter 54-52 and includes the combined PERS fund, which is made up of the PERS main system, the judges' retirement system, the National Guard retirement system, the law enforcement with prior main service, and the 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 that differ 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.

Normal Service Retirement Benefits

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 eligible years of service. Members of the law enforcement retirement system are eligible for a normal service retirement at age 55 and three eligible 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.

Early Service Retirement Benefits

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 qualifying under the 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 qualifying under the 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 qualifying under the 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.

Disability Benefits

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.

Deferred Vested Retirement Benefits

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 qualifying under 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 qualifying under the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attaining age 50.

Death Benefits

The surviving spouse who is the sole refund beneficiary 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. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance. 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 nor have no surviving spouse, the benefit is a lump sum payment of the member's accumulated contributions with interest.

Benefits for Terminated Members

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.

Standard Form of Payment

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; 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, or a deferred normal retirement option. 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.

Retirement System Contributions

Except for the employer contribution rate for the National Guard and the law enforcement retirement systems, contribution rates are specified by statute. The statutory rates were increased effective January 1, 2014, to address needs of the funds. These January 1, 2014, increases are scheduled to revert to the contribution rates in effect on July 1, 2013, on July 1 following the first valuation of the PERS main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the PERS main system that is equal to or greater than 100 percent.

- The contribution rate for a member of the main system is 7 percent, and the employer contribution is 7.12 percent.
- The employee contribution for the judges' retirement system is 8 percent, and the employer contribution is 17.52 percent.
- The contribution rate for a member of the National Guard retirement system is 4.5 percent, and the employer contribution is 7.0 percent.
- The contribution rate for a political subdivision member of the law enforcement retirement system with prior main service is 5.50 percent, and the employer contribution is 9.81 percent.
- The contribution rate for a Bureau of Criminal Investigation member of the law enforcement system with prior main service is 6 percent, and the employer contribution is 10.31 percent.
- The contribution rate for a political subdivision member of the law enforcement retirement system without prior main service is 5.50 percent, and the employer contribution is 7.93 percent.
- A part-time employee in the main system contributes 10.12 percent with no employer contribution.

Deferred Compensation Program

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.

Retiree Health Insurance Credit Fund

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, medical benefits coverage, prescription drug coverage under any health insurance program and dental, vision, and long-term care 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 fund provides a monthly credit for health insurance benefits of $5 multiplied by the retired members' years of service.

ACTUARIAL REPORTS

Teachers' Fund for Retirement

The committee received annual valuation reports on TFFR. The latest available valuation report of the consulting actuary was dated July 1, 2014, and this report addresses the material presented in that most recent valuation report. 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. 67, 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 29 years beginning July 1, 2014, although at any given time the statutory rates may be insufficient.

In order to determine the adequacy of the 12.75 percent statutory employer contribution rate, the rate is compared to the actuarially determined contribution. The actuarially determined contribution is equal to the sum of the employer normal cost rate and the level percentage of pay required to amortize the unfunded actuarial accrued liability over a 30-year closed period that began July 1, 2013. For this calculation, payroll is assumed to increase 3.25 percent per year. As of July 1, 2014, the actuarially determined contribution is 11.57 percent, compared to 10.26 percent on July 1, 2013. This is less than the 12.75 percent currently required by law. Based on the market value of assets rather than actuarial values of assets, the funded ratio increased to 66.6 percent, compared to 61.4 percent last year.

The plan had a net asset gain of $151 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 gain is due to market gains during fiscal years 2011, 2013, and 2014, offset by an asset loss in fiscal year 2012. As these gains are recognized over the next four years, the funded ratio is expected to continue to improve, assuming the plan is able to earn 8 percent in the future.

The Teachers' Fund for Retirement is required to report in its Comprehensive Annual Financial Report, the net pension liability, the sensitivity of the net pension liability to changes in the discount rate, a schedule of changes in net pension liability, and a comparison of actual contributions to the actuarially determined contribution. The state and the school districts need to comply with GASB Statement No. 68, which also requires disclosure of certain actuarial information in their financial statements.

The actuarial valuation reflects the benefit and contribution provisions set forth in Century Code. These have not changed from the prior valuation. Actuarial assumptions and methods are set by the 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. The actuarial consultant reported the assumptions, as approved by the Board of Trustees, are reasonably related to the experience of the plan.

Effective with the July 1, 2013, actuarial valuation, the Board of Trustees adopted an actuarial funding policy, which provides direction on how to calculate an actuarially determined contribution. The actuarially determined contribution is compared to statutory contribution rates as a measure of funding adequacy.

The actuarial consultant identified several significant issues in the valuation year. The Governmental Accounting Standards Board approved two new statements affecting the reporting of pension liabilities for accounting purposes. Statement No. 67 replaces Statement No. 25 and is for plan reporting. Statement No. 68 replaces Statement No. 27 and is for employer reporting. Statement No. 67 is effective with the fiscal year ending June 30, 2014, for plan reporting. Statement No. 68 is effective with the fiscal year ending June 30, 2015, for employer reporting. The information contained in the valuation report is intended to be used, along with other information, to comply with both Statements Nos. 67 and 68.

The employer statutory contribution rate for the fiscal year beginning July 1, 2014, under Century Code is equal to 12.75 percent of payroll for employers. Compared to the annual required contribution of 11.57 percent of payroll, the contribution sufficiency is 1.18 percent of payroll as of July 1, 2014.

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. Employer and member contributions will be reset to 7.75 percent each once TFFR reaches a 100 percent funded ratio, measured using the actuarial value of assets.

The funded ratio based on the actuarial value of assets over the actuarial accrued liability as of July 1, 2014, is 61.8 percent, compared to 58.8 percent as of July 1, 2013. This ratio is a measure of funding status, and its history is a measure of funding progress. The total 8 percent increase in the statutory contribution rates is expected to improve the funded ratio of the plan over time.

For the year ending June 30, 2014, the consulting actuary determined the asset return on a market value basis was 16.1 percent. After gradual recognition of investment gains and losses under the actuarial smoothing method, the actuarial rate of return was 12.6 percent. This represents an experience gain when compared to the assumed rate of 8 percent. As of June 30, 2014, the actuarial value of assets, $1.940 billion, represented 92.8 percent of the market value, $2.091 billion.

The portion of deferred investment gains and losses recognized during the calculation of the July 1, 2014, actuarial value of assets contributed to a gain of $80,084,128. The demographic and liability experience resulted in an $8,882,399 loss.

The current method used to determine the actuarial value of assets yields an amount that is 92.8 percent of the market value of assets as of June 30, 2014. This 92.8 percent falls within the 20 percent corridor, so no further adjustment to the actuarial value of assets is necessary. Guidelines in Actuarial Standard of Practice Statement No. 44, selection and use of asset valuation methods for pension valuations, recommends that asset values fall within a reasonable range around the corresponding market value. The actuarial asset method complies with these guidelines.

When measuring pension liability for GASB purposes, the same actuarial cost method, entry age normal, is used to determine the funded status of the plan, the actuarially determined contribution rate, and the effective amortization period. In addition, the GASB blended discount rate calculation results in the same discount rate, expected return on assets as used for funding purposes, 8.0 percent. This means that the total pension liability measure for financial reporting shown in this report is determined on the same basis as the actuarial accrued liability measure for funding. The same is true for the normal cost component of the annual plan cost for funding and financial reporting.

The net pension liability is equal to the difference between the total pension liability and the plan's fiduciary net position. The plan's fiduciary net position is equal to the market value of assets; therefore, the net pension liability measure is very similar to the unfunded actuarial accrued liability on a market value basis. The net pension liability decreased from $1,157,555,127 as of June 30, 2013, to $1,047,822,717 as of June 30, 2014.

The actuarial valuation report as of July 1, 2014, is based on financial data as of that date. Changes in the value of assets subsequent to that date are not reflected. The fund's cashflow--contributions minus benefit payments, refunds, and expenses--as a percentage of the market value of assets is 2.0 percent as of June 30, 2014, compared to 1.9 percent as of June 30, 2013. The increase in the employer and member contribution rates effective July 1, 2014, will improve the cashflow percentage, assuming all other experience emerges as expected.

As of July 1, 2014, the fund had 10,305 active members, 1,509 inactive vested members, 661 inactive nonvested members, and 7,747 retirees and beneficiaries. The average age of active members was 42.9 years, and active members have 12.8 average years of service. Average compensation for active members was $54,073. As of July 1, 2014, 7,120 retirees and 627 beneficiaries were receiving total monthly benefits of $13,814,311, with the average monthly benefit amount for the retirees and beneficiaries $1,722.

The assets at market value were $1.839 billion, with an actuarial value of $1.940 billion. The actuarial rate of return was 12.6 percent and the market rate of return was 16.1 percent.

Public Employees Retirement System

The committee received reports on actuarial valuations and reviews as of July 1, 2013, and of July 1, 2014, on the following four funds:

- Combined PERS fund;
- Highway Patrolmen's retirement system;
- Retiree health insurance credit fund; and
- Retirement plan for employees of Job Service North Dakota.

The valuations were performed to determine whether the assets and statutory contributions are anticipated to be sufficient to provide the prescribed benefits. The purpose of the actuarial valuations is to determine the contribution is sufficient to meet the long-term obligations to the members covered by the funds in accordance with the benefit provisions of the funds. This report reflects the data from the latest available valuation reports, dated July 1, 2014.

Each of the reports referenced that GASB recently approved two new statements. Statement No. 67 replaces Statement No. 25 and governs plan reporting. Statement No. 68 replaces Statement No. 27 and governs employer reporting. It is important to note that the new GASB rules only redefine liabilities and pension expense for financial reporting purposes, and do not apply to contribution amounts for funding purposes. These statements are applicable for preparing the 2013-14 fiscal year financial statements for the plan and for the 2014-15 fiscal year financial statements for contributing employers.

Each report clarified the actuarial valuation reports are based on financial and demographic information as of July 1, 2014. Changes subsequent to that date are not reflected and could affect future actuarial costs of the plans.

Combined Public Employees Retirement System Fund

The combined PERS fund is made up of the main system, judges, National Guard, law enforcement with prior main system service, and law enforcement without prior main system service. For the combined PERS fund, the present contribution rates are not sufficient to meet the actuarially determined requirement for 2014-15, based upon the actuarial assumptions and financing objectives approved by the Retirement Board. If unchanged, this difference will further increase the actuarial contribution requirement in future valuations.

The Retirement Board has recommended contribution increases in each of the last two legislative sessions and continues to review projected future performance to determine appropriate measures to mitigate the difference between the actuarial and statutory contribution rates.

The employer actuarial contribution requirements for 2014-15 are:

	Amount	Percentage of Payroll	Statutory/Approved Contribution Rate
Main system	$104,636,238	11.06%	7.12%
Judges	$1,030,705	14.80%	17.52%
National Guard	$97,523	8.14%	7.00%
Law enforcement with prior main system service	$1,479,482	9.52%	9.81%[1]
Law enforcement without prior main system service	$270,026	7.42%	7.93%

[1]Bureau of Criminal Investigation rate is 10.31 percent.

The following is a comparison of this year's actuarial contribution requirements to last year's requirements as a percentage of payroll:

	2013-14	2014-15
Main system	12.14%	11.06%
Judges	16.66%	14.80%
National Guard	9.07%	8.14%
Law enforcement with prior main system service	11.07%	9.52%
Law enforcement without prior main system service	8.11%	7.42%

The employer actuarial contribution requirement for the main system for 2014-15 is $104,636,238, or 11.06 percent of payroll, and exceeds the statutory rate of 7.12 percent of payroll as of the valuation date by 3.94 percent. Last year, the actuarial contribution requirement was 12.14 percent, and the deficit was 4.52 percent based on the ultimate statutory rates.

The demographic assumptions are reviewed every four or five years by the completion of an experience study. The most recent experience study was completed in 2010, and the actuarial consultant recommends an update to the experience study be performed in the 2014-15 plan year.

The return on the market value of assets for 2014-15 for the PERS fund was 16.14 percent, compared to 13.40 percent for the preceding year. The return on the actuarial value of assets for 2014-15 for the PERS fund was 12.19 percent compared to the investment return assumption of 8 percent. As a result, the PERS fund experienced an investment gain on actuarial value basis of approximately $70.6 million.

The following is a comparison of this year's funded ratio to the prior year's ratio:

	July 1, 2013	July 1, 2014
Actuarial value of assets	$1,682,958,527	$1,895,837,734
Actuarial accrued liability	$2,716,494,799	$2,938,752,157
Funded ratio	62.0%	64.5%

The ratio of the actuarial value of assets to the market value of assets for the PERS fund is 83.1 percent. Last year, this ratio was 86 percent. The unrecognized appreciation represents about 16.9 percent of the PERS fund market value of assets. A property of the asset smoothing method used by PERS is that the actuarial value of assets will tend to lag behind the market value of assets. The potential impact may be illustrated as follows:

- If the unrecognized appreciation were recognized immediately in the actuarial value assets, the funded percentage would increase from 64.5 percent to 77.6 percent.
- If the unrecognized appreciation were recognized immediately in the actuarial value of assets, the actuarial contribution requirement as a percent of payroll would decrease as follows:

	2014-15 Actuarial Contribution Requirement	2014-15 Contribution Reflecting Unrecognized Appreciation
Main system	11.06%	8.30%
Judges	14.8%	7.27%
National Guard	8.14%	5.07%
Law enforcement with prior main service	9.52%	7.88%
Law enforcement without prior main service	7.42%	6.70%

The following shows the age, service, compensation, and contribution account balance information based on date provided for active members as of July 1, 2013, and July 1, 2014:

Category	Year Beginning July 1		Change From Prior Year
	2014	2013	
Main			
Number	21,814	21,201	2.9%
Average age	46.7	47.1	N/A
Average service credit	10.1	10.4	N/A
Total compensation	$946,197,522	$865,868,265	9.3%
Average compensation	$43,376	$40,841	6.2%
Contribution account balance	$732,118,862	$674,447,937	8.6%
Judges			
Number	50	49	2.0%
Average age	58.7	58.6	N/A
Average service credit	16.8	18.3	N/A
Total compensation	$6,964,502	$6,598,981	5.5%

Category	Year Beginning July 1		Change From Prior Year
	2014	2013	
Average compensation	$139,290	$134,673	3.4%
Contribution account balance	$6,561,621	$6,936,518	-5.4%
National Guard			
Number	27	39	-30.8%
Average age	37.6	36.5	N/A
Average service credit	6.6	5.5	N/A
Total compensation	$1,198,481	$1,691,014	-29.1%
Average compensation	$44,388	$43,359	2.4%
Contribution account balance	$478,373	$567,302	-15.7%
Law enforcement with prior main system service			
Number	288	229	25.8%
Average age	38.3	38.5	N/A
Average service credit	7.0	7.3	N/A
Total compensation	$15,534,493	$11,703,913	32.7%
Average compensation	$53,939	$51,109	5.5%
Contribution account balance	$6,349,033	$5,534,559	14.7%
Law enforcement without prior main system service			
Number	83	70	18.6%
Average age	38.2	37.5	N/A
Average service credit	3.6	3.3	N/A
Total compensation	$3,641,404	$2,589,887	40.6%
Average compensation	$43,872	$36,998	18.6%
Contribution account balance	$1,004,240	$408,861	145.6%
All active members			
Number	22,262	21,558	3.1%
Average age	46.6	47.0	N/A
Average service credit	10.1	10.4	N/A
Total compensation	$973,536,402	$888,452,060	9.6%
Average compensation	$43,731	$41,155	6.3%
Contribution account balance	$746,512,129	$687,895,177	8.5%

The combined market value of net assets of the PERS fund and the Highway Patrolmen's retirement system was $2,347,301,808, an increase of $332.6 million compared to $2,014,714,110 a year earlier. This year's combined market value represents an increase of 16.5 percent from the market value one year earlier. The rate of return on the market value basis for the PERS fund was 16.15 percent for the year ended June 30, 2014. 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 the PERS fund and the Highway Patrolmen's retirement system income funds to determine the combined actuarial value of the systems. The combined actuarial value was $1,950,401,117 as of June 30, 2014. There is approximately $397 million of appreciation that will be recognized in future years. For the 10-year period ending June 30, 2014, the combined investment results yielded earnings of $879,027,400 on an actuarial value basis representing an average annual return of 5.79 percent. For the 2013-14 year, the actuarial rate of return on the combined value of assets was 12.20 percent.

There are 4,363 inactive members as of July 1, 2014, with vested rights to deferred retirement benefits. The average deferred monthly benefit for this group is $425. There also are 18 members from the main system, 1 member from the National Guard retirement system, and 1 member from law enforcement with prior main system service on leave of absence. For these groups, a liability is carried for the deferred retirement benefits for nine vested participants. The remaining 11 members from the main system are valued as due refunds. There are 4,039 inactive members who are due refunds. There are 8,535 pensioners and 820 beneficiaries receiving average monthly benefits of $1,034 as of July 1, 2014. During the year ended June 30, 2014, 793 members were awarded a pension. Additionally, there are seven pensioners receiving benefits under the special prior service plan.

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 14.12 percent of payroll--7 percent for the member and 7.12 percent for the employer, as of July 1, 2014--resulting in a deficit of 3.94 percent. This and the Retirement Board's funding policy result in an infinite effective amortization period. The contribution net of normal cost 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. If deferred asset appreciation were taken into account on the valuation date, the effective amortization period would be 30.9 years. The total employer contribution requirement was 12.14 percent of payroll last year, resulting in a deficit of 4.52 percent based on the ultimate statutory contribution rates.

The total statutory contribution rate for the judges' retirement system is 25.52 percent of payroll--8 percent for the member, and 17.52 percent for the employer as of July 1, 2014--resulting in a margin of 2.72 percent of payroll and an effective amortization period of 9.7 years. If deferred asset appreciation were taken into account on the valuation date, the assets would exceed the actuarial accrued liability and no amortization would be required. The total employer contribution requirement was 16.66 percent of payroll last year, resulting in a margin of 1.36 percent based on the ultimate statutory contribution rate.

The total approved employer contribution rate set by the Retirement Board for the National Guard retirement system is 11.5 percent of payroll--4.5 percent for the member and 7 percent for the employer, as of July 1, 2014--resulting in a deficit of 1.14 percent of payroll and an infinite effective amortization period. The contribution net of normal cost 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. If deferred asset appreciation were taken into account on the valuation date, the assets would exceed the actuarial accrued liability and no amortization would be required. The total employer contribution requirement was 9.07 percent of payroll last year, resulting in a deficit of 1.82 percent based on the ultimate statutory contribution rates.

The contribution rate set by the Retirement Board for the law enforcement with prior main service system plan is 9.81 percent of payroll and 10.31 percent for Bureau of Criminal Investigation employees. The statutory member contribution rate is 6 percent of payroll as of July 1, 2014, for members employed by the Bureau of Criminal Investigation and 5.50 percent of payroll as of July 1, 2014, for all other members in this segment. The plan has a margin of 0.38 percent of payroll. Under the current policy and statute, this segment has an effective amortization period of 17.9 years. If deferred asset appreciation were taken into account on the valuation date, the effective amortization period would be reduced to 10 years. The total employer contribution requirement was 11.18 percent of payroll last year, resulting in a deficit of 1.06 percent based on the ultimate statutory contribution rates.

The total approved contribution rate set by the Retirement Board for the law enforcement without prior main service system plan is 13.43 percent of payroll--5.5 percent of payroll for the member and 7.93 percent of payroll for the employer--resulting in a margin of 0.51 percent of payroll and an effective amortization period of 10.7 years. If deferred asset appreciation were taken into account on the valuation date, the effective amortization period would be reduced to 1.3 years. The total employer contribution requirement was 8.11 percent of payroll last year, resulting in a margin of 0.07 percent based upon the ultimate statutory contribution rates.

Highway Patrolmen's Retirement System

The consulting actuary reported the present rate of contributions is not sufficient to meet the actuarially determined requirement for 2014-15, based upon the actuarial assumptions and financing objectives approved by the Retirement Board. However, if the unrecognized asset appreciation were recognized immediately, the ultimate statutory contribution rate is projected to be sufficient.

The employer actuarial contribution requirement for 2014-15 is $2,201,479, or 21.70 percent of payroll, and exceeds the statutory rate of 19.70 percent of payroll as of the valuation date by 2 percent. Last year, the actuarial contribution requirement was 25.11 percent and exceeded the ultimate statutory rate of 19.7 percent by 4.91 percent.

The decrease in the contribution rate deficit this year was primarily due to the asset return. The return on the market value of assets for 2013-14 was 16.29 percent and was 13.52 percent for the previous year.

The return on the actuarial value of assets for 2013-14 was 12.60 percent compared to the investment return assumption of 8 percent. As a result, the system experienced an actuarial investment gain of $2.2 million.

For July 1, 2014, the actuarial value of assets is $54,563,383, the actuarial accrued liability is $75,464,668, and the funded ratio is 72.3 percent; for July 1, 2013, the actuarial value of assets was $49,039,331, the actuarial accrued liability was $71,892,312, and the funded ratio was 68.2 percent.

The ratio of the actuarial value of assets to the market value of assets was 83.1 percent. Last year, this ratio was 86.0 percent. The unrecognized asset appreciation represents about 16.9 percent of the market value of assets. A property of the asset smoothing method used by PERS is that the actuarial value of assets will tend to lag behind the market value of assets. This unrecognized appreciation will be recognized over the next five years. The potential impact may be illustrated as follows:

- If the unrecognized appreciation were recognized immediately in the actuarial value of assets, the funded percentage would increase from 72.3 percent to 87.0 percent.
- If the unrecognized appreciation were recognized immediately in the actuarial value of assets, the actuarial contribution requirement would decrease from 21.70 percent of payroll to 14.06 percent of payroll.

Total active membership is 156, with an average age of 37.3 years and average years of service of 11.2. As of July 1, 2014, there are 113 pensioners and beneficiaries, with an average monthly benefit of $2,820, and an average age of 68.0.

The Highway Patrolmen's retirement fund had net assets with a market value of $65,666,865. This compares to $57,044,084 as of July 1, 2013. The rate of return on the market value basis for the Highway Patrolmen's retirement fund was 16.29 percent for the year ended June 30, 2014.

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 if the investment return attributable to net interest and dividends is less than the assumed rate of return.

The actuarial value of assets as of July 1, 2014, is $54,563,383. The actuarial value of assets was $49,039,331 on July 1, 2013. Thus, on an actuarial basis, the rate of return on the Highway Patrolmen's retirement fund was 12.60 percent for the year ended June 30, 2014.

Retiree Health Insurance Credit Fund

The actuarial consultant identified several highlights in the valuation year. The present rate of contributions is sufficient to meet the actuarially determined requirement for 2014-15, based upon the actuarial assumptions and financing objectives approved by the Retirement Board.

The actuarial contribution requirement for 2014-15 is $6.4 million, or 0.64 percent of payroll. The statutory rate of 1.14 percent of payroll is greater than the actuarially determined rate by 0.50 percent of payroll. Last year, the statutory rate exceeded the actuarially determined rate of 0.77 percent by 0.37 percent of payroll. The largest factor in the change in actuarial contribution requirement was the actual contributions being greater than expected.

The return on the market value of assets for 2013-14 was 15.94 percent, and was 12.11 percent for the preceding year. The return on the actuarial value of assets for 2013-14 was 11.56 percent compared to the investment return assumption of 8 percent. As a result, the fund experienced an investment gain on actuarial basis of approximately $2.4 million.

For July 1, 2014, the fund's actuarial value of assets is $77,925,234, the actuarial accrued liability is $116,663,623, and the funded ratio is 66.8 percent; July 1, 2013, the fund's actuarial value of assets was $65,972,463, the actuarial accrued liability was $114,052,953, and the funded ratio was 57.8 percent.

The recognized appreciation represents about 15.3 percent of the market value of assets. A property of the asset smoothing method used by PERS is that the actuarial value of assets will tend to lag behind the market value of assets. This unrecognized appreciation will be recognized over the next five years. The potential impact may be illustrated as follows:

- If the deferred appreciation were recognized immediately in the actuarial value of assets, the funded percentage would increase from 66.8 percent to 78.9 percent.
- If the deferred appreciation were recognized immediately in the actuarial value of assets, the actuarial contribution requirement would decrease from 0.64 percent of payroll to 0.53 percent of payroll.

Members of the optional defined contribution plan are also eligible to participate in the retiree health insurance credit fund. Based on the member data provided to the consulting actuary, 224 of these active members are included in this actuarial valuation.

The fund has 22,642 active members, with an average age of 46.6 years and average years of service of 10. On July 1, 2014, benefits are being paid to 4,828 individuals and the average benefit paid to these retired members and beneficiaries is $119 per month.

Draft financial statements as of June 30, 2014, show the market value of net assets of the fund is $92,013,709, an increase of $16.5 million from a year earlier. This market value represents an increase of 21.8 percent over the market

value one year earlier. The rate of return on the market value basis was 15.94 percent for the year ended June 30, 2014. On an actuarial basis, the rate of return was 11.56 percent for the year ended June 30, 2014.

There is approximately $14.1 million of deferred appreciation that will be recognized in future years. For the prior year, there was approximately $9.6 million of appreciation to be recognized in future years.

The statutory contribution rate is 1.14 percent of payroll. The plan has a margin of 0.50 percent of payroll. If deferred asset appreciation were taken into account on the valuation date, the margin would be 0.61 percent of payroll.

Retirement Plan for Employees of Job Service North Dakota

The Retirement Board assumed administration of the retirement plan for employees of Job Service North Dakota from Job Service pursuant to legislation enacted in 2003. This is a closed retirement plan for employees of Job Service.

As of July 1, 2014, the plan has 13 active participants with projected compensation of $790,645. There is one inactive employee as of July 1, 2014, with vested rights. There are 140 pensioners and beneficiaries as of July 1, 2014, and 73 pensioners and beneficiaries receiving annuities from the Travelers Plan as of July 1, 2014. Thus, there are 227 plan participants as of July 1, 2014.

The scheduled contribution at the end of the year ending June 30, 2014, was zero, and thus the normal cost was zero. The July 1, 2014, actuarial valuation reported the actuarial value of assets at $78,157,302 with a market value of $97,696,628. The actuarial present value of projected benefits is $65,479,120. 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.

As of July 1, 2014, the market value of assets is 149.2 percent of the actuarial present value of projected benefits. While there is no contribution due at this time, the consulting actuary reported the Retirement Board may wish to consider asset strategies to immunize the liabilities in order to reduce the risk of future contributions being required.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN LEGISLATIVE PROPOSALS

The committee established April 1, 2014, as the deadline for submission of retirement, health, and retiree health proposals. The deadline is intended to provide 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 legislators and those agencies entitled to the bill introduction privilege to submit proposals for consideration. The committee recognized that some interim committees, such as the interim Government Finance Committee, may submit proposals after this deadline and that the committee retains the authority to waive this self-imposed deadline.

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 the legislative proposals 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 Board of Trustees and the State Investment Board also used the actuarial services of The Segal Company in evaluating proposals that affected TFFR and the State Investment Board.

The committee obtained written actuarial information on each proposal received by the committee's September 2014 meeting. 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 the proposal. Based on these factors, the legislative proposals received a favorable recommendation, unfavorable recommendation, or no recommendation. The committee plans to hold a December 2014 meeting to receive actuarial reports and make committee recommendations on legislative proposals received by the committee after the September 2014 meeting.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to each proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 64th Legislative Assembly.

State Investment Board

The following is a summary of the proposal affecting the State Investment Board over which the committee took jurisdiction and the committee's action on the proposal:

Bill No. 135

Sponsor: State Investment Board

Proposal: Updates Sections 21-10-02.1 and 21-10-06, relating to the duties of the State Investment Board.

Actuarial analysis: This bill would have no actuarial cost impact on the TFFR, PERS, or other investment clients of the State Investment Board.

Committee report: Favorable recommendation.

Teachers' Fund for Retirement

The following is a summary of the proposal affecting TFFR over which the committee took jurisdiction and the committee's action on the proposal:

Bill No. 140

Sponsor: TFFR

Proposal: In various sections of Chapter 15-39.1, the bill would automatically update federal compliance provisions of the TFFR plan regarding Internal Revenue Code Sections 401(a)(17), 401(a)(9), 401(a)(31), 402(c), and 415(b), (d), and (n), as amended, and would also automatically update Internal Revenue Code sections relating to salary reduction or salary deferral amounts, including Internal Revenue Code Sections 125, 132(f), 401(k), 403(b), 414(h), and 457, as amended.

Actuarial analysis: The bill would have an immaterial actuarial cost impact on TFFR.

Committee report: Favorable recommendation.

Public Employees Retirement System

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. 136

Sponsor: PERS

Proposal: Would revise the definition of "salary" in the Highway Patrolmen's retirement system to exclude expense allowances; automatically update federal compliance provisions of the PERS hybrid plan, Highway Patrolmen's retirement system, and defined contribution plan regarding Internal Revenue Code Sections 401(a)(17), 401(a)(9), 401(a)(31), 415(b) and (d), and 402(c)(4), as amended, in Sections 39-03.1-11.2, 54-52-28, and 54-52.6-21; update federal compliance provisions for qualified military service in the PERS hybrid plan, Highway Patrolmen's retirement system, and defined contribution plan to comply with required amendments under the federal Heroes Earnings Assistance and Tax Relief Act of 2008 (HEART Act) in Sections 54-52-17.14, 39-03.1-10.3, and 54-52.6-09.4; require that employees of participating political subdivisions be enrolled in the PERS hybrid plan within the first month of eligible employment and that retirees returning to work must reenroll in the plan or permanently waive future participation in the plan within the first month of reemployment; provide clarifying language regarding determination of final average salary for participants in the Highway Patrolmen's retirement system and temporary employees in the PERS hybrid plan; and provide clarifying language indicating that the three eligible years of employment required to reach normal retirement date for a National Guard security officer or firefighter, a peace officer, or a correctional officer does not have to be earned in that specific job classification.

Actuarial analysis: The bill would not have a significant actuarial cost impact on the PERS hybrid plan or the Highway Patrolmen's retirement system.

Committee report: Favorable recommendation.

Bill No. 139

Sponsor: Adjutant General

Proposal: The bill would align the contribution structure of both member and employer contributions for security officers and firefighters employed by the National Guard with the contribution structure for law enforcement with prior main service members and would add Rule of 85 eligibility for normal retirement benefits to National Guard security officers and firefighters.

Actuarial analysis: The bill would not have a material impact on the overall actuarial cost of the PERS hybrid plan. If assets are transferred between cost groups as a result of the bill, the cost rates associated with those groups could change.

Committee report: Favorable recommendation.

Bill No. 137

Sponsor: PERS

Proposal: The bill would increase both the employer contribution rates and the member contribution rates that are mandated by statute in the PERS hybrid plan (main only) and defined contribution plan by 1 percent of the member's monthly salary beginning January 2016. The bill would also adjust member contribution rates for the following groups:

- Peace officers in the PERS hybrid plan employed by the Bureau of Criminal Investigation, for which member contributions would decrease by 0.5 percent of monthly salary, rather than increase. While not part of the bill, the consulting actuary assumed the employer contributions will not decrease in 2016 unless approved by the PERS Retirement Board; and
- Temporary employees in the PERS hybrid plan and defined contribution plan, for which the member contribution rate would increase by 2 percent of monthly salary in 2016, instead of 1 percent.

The bill would also make the following benefit modifications for hybrid plan members (except for National Guard security officers, peace officers, or correctional officers employed by the Bureau of Criminal Investigation or by a political subdivision, or a Supreme Court or district court judge) first enrolled after December 31, 2015:

- Final average salary would be based on the 5 highest periods of 12 consecutive months employed during the last 180 months immediately preceding retirement, excluding months without earnings. Currently, final average salary is based on the highest salary for any 36 months employed within the last 180 months of employment, with no requirement for any months to be consecutive;
- The minimum age at which unreduced benefits could begin (normal retirement date) would be increased to a combined total of years of service credit and years of age equal to 90 where a member is at least 60 years old (Rule of 90). Currently, normal retirement age requires attaining a Rule of 85 with no minimum age; and
- The early retirement reduction would be changed from an actuarial reduction to account for benefit payment before normal retirement date to a fixed rate of 8 percent per year benefit payments begin before normal retirement date.

Actuarial analysis: The bill would positively affect the current funding level of the PERS hybrid plan.

Committee report: No recommendation.

Committee Report Bill No. 79

Sponsor: Legislative Management (Health Care Reform Review Committee)

Proposal: The bill require the medical benefits coverage of services provided by the health care provider by means of telemedicine to be the same as the medical benefits coverage for the same services provided by the health care provider in-person.

Actuarial analysis: There are many different ways and mediums by which telemedicine is delivered today and there will likely continue to be additional advances in this regard. The current PERS medical benefits cover health care facility-based services from provider to members, and Blue Cross Blue Shield of North Dakota has therefore stated that there would be no cost impact if the coverage parameters are not changed. However, Blue Cross Blue Shield of North Dakota has stated that if the intent is to expand coverage of telemedicine mediums other than what is currently covered, there may be additional cost to the plan. Telemedicine providers claim impressive returns on investment; however, the equipment can be expensive. Therefore, the services and mediums by which telemedicine is delivered need to be specifically considered and defined in the plan.

Committee report: Favorable recommendation.

Bill No. 43

Sponsor: Representative Jessica Haak

Proposal: The bill would allow current active defined contribution participants the option to participate in the PERS hybrid plan. This election would take place during a three-calendar-month period beginning no later than February 1, 2016. Participants' defined contribution accumulated fund balances (less rollovers) would be transferred to the PERS hybrid plan, and the participant would be credited with benefits as if they had always participated in the PERS hybrid plan. The opportunity for defined contribution plan participants to participate in the hybrid plan is limited only to currently active employees with a participating employer whose defined contribution plan account balances are not subject to any court order, such as a qualified domestic relations order.

Actuarial analysis: The bill will have an actuarial cost impact on the hybrid plan. Due to the transfer of funds and the crediting of service, both the assets and the liabilities would increase as a result of the transfer. It is difficult to predict which participants will elect to participate in the hybrid plan. However, previous analysis has concluded that for nearly all defined contribution plan members, the account balance is less than the actuarial present value of comparable service under the hybrid plan. For this reason, it is assumed that 100 percent of defined contribution participants will elect to transfer in this analysis.

Based upon analysis, the unfunded actuarial accrued liability for members as of July 1, 2014, would be $40,506,274 offset by assets from the existing defined contribution plan of $27,952,921. If this were to be amortized using the current 20-year policy of the PERS plan for main members, the required annual contribution would be $876,102. In addition to this amortization amount, the annual employer normal cost (total normal cost less member contributions) would be $625,374. This would result in an annual required employer contribution of $1,501,476 on behalf of the defined contribution plan participants, which is approximately 8.5 percent of defined contribution plan participant payroll (a total of 15.5 percent of payroll including employee contributions). This is based on the projected annual payroll of $17,575,003 for defined contribution plan members.

If these participants were allowed to enter the PERS plan and were subject to the same contributions as current PERS main members, the resulting 14.12 percent of pay contribution would be approximately 1.38 percent of payroll less than actuarially required for these participants. Under the recommended 16.12 percent of contribution, the addition of these members would result in an actuarial gain to the system.

Committee report: No recommendation.

The committee took jurisdiction over the following bills, but due to the late date the committee received the bill drafts or bill draft revisions, the committee did not receive an actuarial analysis before the November 2014 Legislative Management meeting and therefore did not make a recommendation by the end of the interim:

Bill Draft No. 176

Sponsor: Legislative Management (Government Finance Committee)

Proposal: The bill draft would provide that an eligible state employee hired for the first time after December 31, 2015, would be required to enroll in the defined contribution plan rather than the defined benefit plan. The bill draft would not affect current or future Supreme Court or district court judges, employees eligible to participate in the National Guard retirement plan or the law enforcement plan, employees of a political subdivision, or employees of the State Board of Higher Education and state institutions under the jurisdiction of the State Board of Higher Education which are participating in the TIAA-CREF retirement plan. The bill draft would provide state employees currently participating in the defined benefit plan and those hired before January 1, 2016, who elect to participate in the defined benefit plan would continue to participate in the defined benefit plan; however, during the last six months of 2016, a state employee participating in the defined benefit plan may make an irrevocable election to transfer to the defined contribution plan; and the bill draft would provide the vesting period for employees in the defined contribution plan would be changed to allow employees to become fully vested in employer contributions after one year of service rather than a vesting schedule of 50 percent after two years, 75 percent after three years, and 100 percent after four years.

Bill Draft No. 117

Sponsor: Representative Andrew G. Maragos

Proposal: The bill draft would require that for health insurance and the PERS uniform group insurance plan, the member cost-sharing for cancer medications administered by the patient not exceed member cost-sharing for cancer medications administered by a health care provider.

ADDITIONAL COMMITTEE RESPONSIBILITIES

Compliance with Federal Law

The Board of Trustees reported no action by the committee was required regarding any statutory changes to comply with federal requirements under Section 15-39.1-05.2. The Retirement Board reported no action by the committee was required under Section 39-03.1-29 or 54-52-23 to approve terminology adopted by the Retirement Board to comply with applicable federal statutes or rules. However, the committee did receive a report from the

Retirement Board under Section 54-52.1-08.2 to approve terminology adopted by the Retirement Board to comply with federal requirements.

The committee reviewed the legislative history of House Bill No. 1059 (2013), which modified the PERS uniform group insurance program's eligibility provisions for temporary employees first employed after December 31, 2013, and limited the amount a temporary employee can be required to contribute toward the cost of coverage. The bill was introduced at the request of PERS with the intent of preventing the state from being subjected to the employer shared responsibility penalties under the federal Affordable Care Act (ACA).

On July 2, 2013, the United State Treasury Department announced it will not be enforcing the employer shared responsibility penalties in 2014. Therefore, as enacted, House Bill No. 1059 provided for a compliance date that was one year earlier than required to avoid penalties under the ACA, state and political subdivisions would incur premium costs that are not yet required under the ACA, and it is possible the final federal regulations will differ from the proposed regulations.

The committee authorized PERS to amend House Bill No. 1059 to delay the effective date of Section 2 of the bill to provide for a January 1, 2015, effective date, or the date the related federal rules become final, whichever occurs first.

Firefighters Relief Associations

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.

Recruitment and Retention Bonuses

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 for the 2011-13 biennium and the first year of the 2013-15 biennium:

	July 1, 2011, to June 30, 2013						July 1, 2013, to June 30, 2014					
	Recruitment		Referral		Retention		Recruitment		Referral		Retention	
Agency	#	$$	#	$$	#	$$	#	$$	#	$$	#	$$
Office of Management and Budget											1	$5,000.00
Information Technology Department	20	$28,000.00	1	$500.00			4	$6,000.00				
State Auditor					38	$105,000.00					26	76,500.00
Tax Department					2	12,000.00						
Commission on Legal Counsel for Indigents					4	10,000.00						
Retirement and Investment Office	1	5,000.00										
State Department of Health							4	16,800.00				
Department of Human Services	113	151,528.50	65	15,000.00	14	98,452.00	94	114,759.00	39	$9,750.00	3	24,581.00
Insurance Department	1	4,000.00										
Department of Mineral Resources	3	10,300.00			109	448,419.00	1	2,000.00			65	159,216.00
Bank of North Dakota	9	22,499.50			6	28,584.00	4	12,250.00			2	13,658.00
Highway Patrol			2	1,000.00								
Department of Corrections and Rehabilitation												
State Fair Association												
Department of Transportation	55	259,238.00					26	151,400.00				
Total	202	$480,566.00	68	$16,500.00	173	$702,455.00	133	$303,209.00	39	$9,750.00	97	$278,955.00

Service Awards, Tuition, and Professional Organizations

Human Resource Management Services officials reported for the 2011-13 biennium, state employee service awards totaled $495,126.55; employer-paid costs of training or educational courses, including tuition and fees totaled $5,645,862.21; and employer-paid professional organization membership and service club dues for individuals totaled $1,219,664.36. The following schedule is a summary of the information presented for the 2011-13 biennium:

Report on State Employee Service Awards, Employer-Paid Tuition, and Employer-Paid Professional Organization Memberships and Service Club Dues July 1, 2011, through June 30, 2013 (Sections 54-06-32 to 54-06-34)

Agency Number	Agency	Legislatively Authorized FTE Positions	State Employee Service Awards ($ Amount)	Employer-Paid Costs of Training or Educational Courses, Including Tuition and Fees ($ Amount)	Employer-Paid Professional Organization Membership and Service Club Dues for Individuals ($ Amount)
101	Governor	18	$0	$0	$390.00
108	Secretary of State	28	1,250.00	300.00	10,308.00
110	Office of Management and Budget	131.5	7,911.41	36,510.86	15,766.00
112	Information Technology Department	336.3	34,823.40	811,277.09	80,474.44
112.1	Center for Distance Education		10,399.09	19,392.96	11,941.65
117	State Auditor	50.8	4,830.33	21,284.02	27,946.18
120	State Treasurer	7	0	80.00	6,700.00
125	Attorney General	204	14,952.00	18,420.00	134,952.00
127	Tax Commissioner	134	12,900.00	64,967.25	3,436.00
140	Office of Administrative Hearings	5	39.00	4,440.00	2,140.00
188	Commission on Legal Counsel for Indigents	30	939.85	4,685.78	21,788.56
190	Retirement and Investment Office	18	1,345.00	17,229.00	10,755.00
192	Public Employees Retirement System	33	2,000.00	19,187.00	16,985.00
201	Department of Public Instruction	99.75	6,552.35	9,301.92	8,850.50
226	Department of Trust Lands	24.75	2,067.99	0	9,645.00
250	State Library	29.75	1,370.09	5,652.33	16,965.00
252	School for the Deaf	43.94	2,200.00	26,449.12	4,085.50
253	North Dakota Vision Services - School for the Blind	29.5	163.13	12,226.00	0
270	Board of Career and Technical Education	27.5	1,525.00	679.00	5,775.00
301	State Department of Health	344	22,150.00	93,984.00	23,515.00
305	Tobacco Prevention and Control Committee	5	250.00	6,052.00	385.00
313	Veterans' Home	120.72	4,811.70	26,569.25	21,688.15
316	Indian Affairs Commission	4	0	849.00	600.00
321	Department of Veterans' Affairs	7	0	0	1,900.00
325	Department of Human Services	2197.35	123,400.00	363,753.34	5,004.88
360	Protection and Advocacy Project	28.5	2,436.10	0	0
380	Job Service North Dakota	261.76	19,397.00	18,059.75	23,187.78
401	Insurance Commissioner	49.5	2,950.00	23,761.39	8,771.50
405	Industrial Commission	76.06	5,344.40	25,757.93	0
406	Department of Labor and Human Rights	12	514.03	3,371.00	5,250.00
408	Public Service Commission	43	3,927.92	25,447.03	888.00
412	Aeronautics Commission	6	0	1,177.00	2,088.00
413	Department of Financial Institutions	29	975.00	14,722.00	175.00
414	Securities Department	9	0	6,145.00	941.00
471	Bank of North Dakota	176.5	11,526.28	522,935.10	336,249.14
472	North Dakota Public Finance Authority	2.75	175.00	3,040.00	750.00
473	North Dakota Housing Finance Agency	46	4,200.00	19,437.95	450.00
475	Mill and Elevator	131	3,725.00	38,179.62	21,463.00
485	Workforce Safety and Insurance	247.14	12,500.00	313,151.55	68,158.04
504	Highway Patrol	198	6,482.00	335,344.00	360.00
530	Department of Corrections and Rehabilitation	794.29	46,730.00	240,806.51	101,670.00
540	Adjutant General	242	13,498.30	1,880,762.51	25,538.71
601	Department of Commerce	68.25	3,450.00	62,396.13	7,236.00
602	Agriculture Commissioner	77	2,250.00	48,438.00	10,062.00
607	Milk Marketing Board	6	200.00	0	0
611	North Dakota Soybean Council	7	0	3,696.00	80.00
616	State Seed Department	30	750.00	3,727.50	1,814.90
625	North Dakota State Wheat Commission	8	0	99.00	0
665	State Fair Association	27	0	0	1,651.45
670	Racing Commission	2	0	0	0
701	State Historical Society	63	3,014.64	37,255.85	688.94
709	Council on the Arts	5	151.50	72.00	0
720	Game and Fish Department	157	14,066.12	14,467.49	104,962.00
750	Parks and Recreation Department	54	3,205.17	17,858.00	10,496.49
770	State Water Commission	87	6,377.75	8,947.45	8,819.16
801	Department of Transportation	1063.5	71,400.00	413,516.53	35,916.39
	Total	7936.11	$495,126.55	$5,645,862.21	$1,219,664.36

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. In addition to its statutory study responsibilities, the committee was assigned three studies for the 2013-14 interim.

Section 8 of House Bill No. 1198 directed the study of the likely changes to oil industry practices, production, impacts, and tax policy in the foreseeable future, with the Legislative Management to obtain the services of an independent consultant with demonstrated insight into current and future production advances, including use of carbon dioxide and water or other means of enhancing production; effects of mature production areas on state and local tax policy; future infrastructure needs; and environmental considerations.

Section 41 of Senate Bill No. 2018 directed the study of the feasibility and desirability of the establishment of an energy corridor in the western portion of the state, including an examination of rights of way and state highway and county road easements necessary for the further development of energy resources in the state, and including the existing and necessary easements required to make United States Highway 85 a four-lane highway corridor to complement the development of energy transportation resources.

The Chairman of Legislative Management directed the study of the permitting, regulation, siting of oilfield waste landfills, and the disposal of waste related to oil and gas development.

The Legislative Management assigned six reports to be received by the committee:

- Under Section 17-07-01, the Energy Policy Commission is to report biennially on recommendations concerning a comprehensive energy policy.
- Under Section 16 of Senate Bill No. 2014, the Department of Commerce is to report before September 1, 2014, on the findings and recommendations of the department's study to evaluate value-added market opportunities related to renewable energy resources and oil and gas.
- 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. The committee did not receive a report because it is not required until after December 2014.

Committee members were Senators Rich Wardner (Chairman), John M. Andrist, Kelly M. Armstrong, David Hogue, Philip M. Murphy, and Connie Triplett and Representatives Tracy Boe, Chuck Damschen, Ben W. Hanson, Todd Porter, Mike Schatz, and Peter F. Silbernagel.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

COMPREHENSIVE ENERGY STUDY

The committee has statutory authority to explore a broad area of study relating to energy. As part of these broad study areas, the committee studied pipeline safety, spills, flaring, propane, environmental regulation, hydraulic fracturing, electricity and transmission, enhanced oil recovery, and transportation. The committee also received a report from the Energy Policy Commission, also known as the EmPower North Dakota Commission.

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. 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 commission focused on five topics:

- Infrastructure;
- Workforce;
- Research and development;
- Regulatory environment; and
- Energy growth incentives.

The commission made the following recommendations for infrastructure:

- Support of the passage of legislation within the first 30 days of the 2015 legislative session providing infrastructure funding to oil and gas-impacted areas.
- Support of changes to the gross production tax distribution formula to provide additional funding to assist with local infrastructure needs.
- Support of the funding level that meets the needs identified in the Upper Great Plains Transportation Institute roads study.
- Create a regional infrastructure authority.
- Create a trigger mechanism that will make additional funds available to oil-impacted communities from the state share of oil tax revenue when revenue exceeds forecasted revenue by a certain amount.
- Support of the expansion of existing water systems.
- Support of increased access to Lake Sakakawea water.
- Monitor of the railroad infrastructure upgrade plan.

On workforce issues, the commission made the following recommendations:

- Continued support of the housing incentive fund and consideration of a trigger on an annual basis for additional funds.
- Increase efforts to educate youth on energy careers.
- Encourage collaboration between the energy industry and the North Dakota University System, Governor's Work Force Development Council, Job Service North Dakota, and other agencies to foster agency interaction with teachers and guidance counselors, to provide greater accessibility to career and technical education programs, and to increase funding for workplace safety and training.
- Support of legislation that recognizes the role of distance learning.

The committee was informed that the commission focused on distance learning so critical areas could be taught throughout the state by one teacher. The one teacher could be paid more to be competitive with jobs in the energy industry. The committee was informed that the Department of Commerce is addressing externship programs for

educators in which the externship programs would provide a two-week stint to educators to understand the needs of industry for knowledge and would augment the salaries of teachers.

Committee discussion included that there has been considerable improvement in salaries for teachers in this state, this state is still behind, and that part of the need to catch up on salaries is in the nature of any economic boom. In addition, some teachers are in demand more than others. It was argued that school boards need flexibility to remove certain instructors from the restrictions of the salary schedule.

Regarding research and development, the commission made the following recommendations:

- Support of existing research and development programs and increased funding for lignite research and oil and gas research programs.
- Support of the additional appropriation of research dollars to be used by the lignite and oil and gas research councils to resolve technical problems associated with commercial deployment of carbon capture technologies and improve recovery of oil through enhanced oil recovery using CO_2 and other gases, and support of the development and funding of a front-end engineering and design study to identify commercial opportunities associated with the capture and use of CO_2.
- Create and implement a strategy to assist the development of viable petrochemical and biochemical industries.

Regarding the regulatory environment, the commission made the following recommendations:

- Support federal agencies working with state agencies to recognize environmental issues unique to North Dakota, support state agencies to working with the commission, and support the establishment of new venues for state and federal regulatory agencies to collaborate on federal rulemaking.
- Support the use of the commission to better understand the economic impact of federal regulatory proposals and comment on regulations with significant potential impact to this state.
- Provide adequate funding and staffing for state regulatory agencies in recognition of the additional burdens of new energy development and new regulations through competitive compensation and benefit packages.
- Support the identification of North Dakota-based solutions to manage waste generated from energy production.

Regarding energy growth incentives, the commission made the following recommendations:

- Provide a sales tax exemption for value-added energy facilities, including both equipment and building materials.
- Support incentives to enhance CO_2 capture, storage, and enhanced oil recovery.
- Support an extraction tax credit to encourage the development of technologies for the beneficial use of drill cuttings.
- Support enhanced remote natural gas capture technology to minimize flaring.
- Support an incentive to expand natural gas or liquid natural gas markets.
- Ensure tax certainty for wind.
- Support incentives for the collocation of energy-related infrastructure in the same right of way.
- Remove the beneficiation tax for coal conversion facilities that are subject to coal conversion tax.
- Remove the sunset on the severance tax exemption for beneficiated coal used in agricultural commodity processing facilities.
- Remove the sunset on the sales tax exemption for beneficiated coal when used in agricultural commodity processing facilities.
- Support a sales tax exemption for oil gathering lines.

The committee was informed that recent programs are not structured for a project that is a billion dollar investment, so the commission focused on incentives, but not providing large grants. The state has worked to be competitive with other states and is competitive. For example, there had been no refinery built since 1976, and one was built in North Dakota and permitted in six months. The committee was informed that this could not have been done in any other state.

As a result of the report of the Energy Policy Commission, the committee considered several bill drafts that were based on the recommendation supported by the commission. Some members expressed concern with the process used for the development of the commission's recommendations in that the committee was not able to review all of the testimony and information used by the commission. Other members supported the commission process as being an open process that provides the same amount of information to the committee as state agencies. Committee discussion included the opinion that the commission has been good for North Dakota because it gets participating industries to cooperate and that should limit contentious issues among these industries during the legislative session.

Oil and Gas Strategic Planning Authority Bill Draft

The committee considered a bill draft to create an oil and gas development strategic planning authority. The authority would be governed by the Industrial Commission and the authority would serve in an advisory capacity to the commission. The authority would develop a comprehensive strategic plan to address oil and gas-affected communities' needs. The focus of the authority's attention would be on infrastructure needs. The authority's duties would be to collect information and create and update a plan by analyzing funding, programs, and incentives. The main funding for the authority would come from the Oil and Gas Research Council administrative budget and the main expense would be staffing. The authority would report to the Legislative Council and the Industrial Commission. The Pipeline Authority and the Transmission Authority statutes were used as a model.

The committee was informed that last interim there were 15 studies, there was no coordination among the studies, and there was overlap among the studies. If the overlap of effort can be removed, it would save the state money. At present, no one has the responsibility to look at all the studies to make sure that the money is being wisely spent. It was argued that a person is needed to provide communication and coordination among all the studies being done. The committee was informed that this interim, there have been numerous studies, including a study by the Upper Great Plains Transportation Institute on roads, a workforce study, IHS chemical study, and other studies, and someone needs to follow through with these studies. A master planner could be a liaison, clearinghouse, and updater of studies.

Committee members suggested that the Director of the Department of Transportation (DOT) should be following the Upper Great Plains Transportation Institute study and the workforce study should be followed by Department of Commerce. It was argued that the authority would be usurping some functions of the Governor's cabinet. The Governor or the Industrial Commission could do what the authority does as part of their budget without any changes to the law. It was argued that the bill draft may create a barrier between the public and elected officials. However, the committee was informed that the intention is that the director of the authority would act as a liaison between the Industrial Commission and Legislative Assembly and local governments.

Committee discussion included the suggestion that the Legislative Assembly may conclude that it would be worthwhile to establish a strategic planning function and it was worth recommending the bill draft so that consideration and refinement can be done during the legislative session, if needed.

Supplemental Funding for Political Subdivisions if Oil and Gas Tax Revenues Exceed Legislative Forecast Bill Draft

The committee considered a bill draft to provide supplemental funding to political subdivisions if oil and gas tax revenues exceed legislative forecast. The bill draft provides an automatic trigger mechanism and an appropriation if in the first six months of the biennium revenues exceed the forecast by 20 percent. There would be a $200 million appropriation from the strategic investment and improvements fund to oil and gas-producing political subdivisions using the current funding formula and the funding would not be counted against the formula caps.

The committee was informed that this biennium the forecast was 30 percent low because of the underestimated price of oil and the unprecedented growth in oil and gas production. The committee was informed that oil tax revenue forecasting is necessarily conservative to avoid creating excessive revenue expectations. It was argued that when revenues far exceed estimates the communities that are in need of funds should be provided assistance from a portion of excess collections.

Committee members expressed the opinion that if the price of oil unexpectedly spikes to $150 per barrel, this sort of law should be in place.

Licensing of Commercial Drill Cuttings Recyclers and Well Operator Tax Incentive Bill Draft

The committee considered a bill draft to create a license for commercial drill cuttings recyclers to be issued by the State Department of Health. The State Department of Health would make rules and monitor recyclers. The facility owner would be responsible for costs of inspection and compliance. The goal of the bill draft is to provide beneficial uses for drill cuttings, which would benefit the landowner by having the drill cuttings removed from the landowner's

property. In addition, the bill draft would take pressure off landfills because instead of cuttings going into landfills, materials can be taken out of cuttings for beneficial use. The well owner would not be liable for the cuttings after the cuttings are accepted by the recycler. Because removing cutting from the site would result in additional cost to well operators, the bill draft would provide a reduction in the extraction tax. If the well operator causes 75 percent or more of the drill cuttings to go to a recycler, the first 50,000 barrels of oil produced during the first 18 months after completion would qualify for a reduced tax rate of 5 percent, instead of 6.5 percent. If the well operator also does not place drill cuttings in a reserve pit near the well site, the rate would be reduced to 4 percent, instead of 6.5 percent. The incentive sunsets in two bienniums.

The committee was informed that recycling cuttings is a new technology, but there are companies that can do it. There is approximately $130,000 to $150,000 of additional cost to the operator to remove the cuttings and this bill draft would provide a $60,000 incentive. The committee was informed the reason for the incentive is to get the technology established in North Dakota.

The committee was informed that the 75 percent of drill cuttings threshold came from 25 percent of the cuttings being from the surface casing through the freshwater zone and 75 percent being from down hole. The character and makeup of cuttings is different for the first 25 percent than it is for the last 75 percent. There is beneficial use for almost 100 percent of the 75 percent and technology can remove the hydrocarbons for reuse.

Sales and Use Tax Exemption for Materials Used for Oil Gathering Pipelines Bill Draft

The committee considered a bill draft to create a sales and use tax exemption for materials used for oil gathering pipelines. The sales and use tax exemption is similar to other sales and use tax exemptions because the exemption can be used through an exemption certificate or a refund. The goal of tax exemption for oil gathering lines is to reduce truck traffic and to place oil in the safest and most efficient means of transport.

The committee was informed that it costs $150,000 to $170,000 per mile to install a pipeline and the tax exemption is approximately $22,500 per mile. Committee discussion included concerns over whether the exemption would encourage growth of gathering pipelines. It was suggested that the gathering pipeline industry does not need the incentive because gathering pipelines have the capital and are able to plan better to meet the needs. In addition, it was argued landowner fatigue is the greatest impediment to pipelines and the bill draft is not a direct benefit to landowners.

Committee discussion included a suggestion that there is difficulty in securing easements for gathering lines and saltwater lines and that incentives for landowners should be investigated. It was suggested all the incentives to companies do not help if the landowner will not give the companies an easement. It was also pointed out that regardless of the type of incentive, the more gathering pipelines, the less flaring and the more moving of product. The committee was informed that the commission had discussions on the landowner bottleneck and did not identify a mechanism to address it. The committee was informed that the commission looked at a property tax incentive for landowners, but it was too complicated.

Sales and Use Tax Exemption for Fertilizer or Chemical Processing Facility Bill Draft

The committee considered a bill draft to create a sales and use tax exemption for tangible personal property used for a fertilizer or chemical processing facility. The bill draft would be retroactive to include all of 2015. The committee was informed that CHS, Inc., will begin building a fertilizer plant this spring and the retroactivity is required for CHS, Inc., to take full benefit of the exemption.

Committee discussion included the suggestion that maybe the Legislative Assembly should lower the sales tax instead of providing so many exemptions.

Coal Beneficiation Incentives Bill Draft

The committee considered a bill draft to provide for an exemption from the coal conversion facilities privilege tax for beneficiated coal used within a coal conversion facility and to remove the sunset on the sales and use tax exemptions for beneficiated coal and the severance tax exemption for coal used in certain plants.

The bill draft provides for the removal of the expiration date for beneficiated coal tax reductions to make the reductions permanent. At the time the beneficiated coal tax reductions were created, the legislature was cautious about revenue effect and the reductions were put into law on a trial basis. There has been a report to the interim Tax Committee and the effect of the exemptions for beneficiated coal is minimal. The committee was informed that it appears concerns have been satisfied about this becoming a runaway exemption.

Commission discussion included the observation that beneficiated coal also provides the benefit of reduced coal plant emissions.

Wind Tax Incentive Bill Draft

The committee considered a bill draft to increase the factor to determine taxable valuation on wind generation units commenced before January 1, 2015, and completed before January 1, 2017, from 1.5 to 3 percent, to provide a grace period for the income tax credit relating to those wind towers, to remove the sunset on the sales tax exemption for wind generators, and to remove the $5 million cap on the sales and use tax exemption for new coal mines located in this state.

The property tax reduction on wind power has been extended three times and is being extended at this time because some projects were not able to meet the deadline because of federal actions. The rate will raise from 1.5 to 3 percent and then to a 4.5 percent equivalent rate that is equivalent with other energy producers and is based on a production capacity rate. If the projects are completed on schedule, the tax rate would have been 1.5 percent. The tax rate will be 3 percent if completed by the end of 2016 if the wind project has a purchase power agreement or a determination of prudence. The committee was informed that the industry is maturing and the bill draft provides tax certainty for wind and takes steps toward parity.

Committee discussion included that commercial property is valued at 10 percent, residential at 9 percent, and wind was 3 percent, and then lowered to 1.5 percent. This bill draft would bring wind back to 3 percent for certain unfinished projects.

Committee discussion included that without consultation with counties, the committee does not know how the change in valuation for property tax purposes will affect the counties. It was suggested the committee should have this information because counties make their budgets based upon property tax collections. It was argued that the bill will be thoroughly debated in the legislative session and counties will be able to raise any concerns.

Pipeline Safety

While the federal government is primarily responsible for developing, issuing, and enforcing pipeline safety regulations, the pipeline safety statutes provide for state assumption of the intrastate regulatory, inspection, and enforcement responsibilities under an annual certification. To qualify for certification, a state must adopt the minimum federal regulations and may adopt additional or more stringent regulations as long as they are not incompatible. A state also must provide for enforcement sanctions substantially the same as those authorized by the pipeline safety statutes. Once certified, the state is responsible for oversight of pipelines that do not cross state boundaries. Except for Alaska and Hawaii, every state is participating in the natural gas pipeline safety program. If a state decides not to participate, the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) does the safety inspection on its own. At least 13 states participate in the liquid program. The lower number is most likely due to the significantly lower number of miles of liquid pipelines. At least 11 states act as interstate agents on behalf of the federal government. In this role, state personnel inspect interstate pipelines and submit reports to PHMSA, which carries out compliance and enforcement action as necessary.

States are allowed to adopt gas or liquid pipeline safety regulations that are stricter than federal government regulations, and the overwhelming majority of states do have more stringent requirements. These have been developed over the years based on specific results of state inspections, changing public priorities, and increased safety expectations of the local public.

Natural Gas Pipeline Jurisdiction

In North Dakota, through certification by PHMSA, the state inspects and enforces the pipeline safety regulations for intrastate gas pipeline operators in this state, in particular distribution and transmission lines. The work is performed by the Public Service Commission (PSC). Federal grant funds are used as an incentive to improve state program performance and to entice states to take more responsibility. The grants provide up to 80 percent of the state's cost. Interstate pipelines inspection and enforcement is done by PHMSA.

The PSC pipeline staff was increased from one individual to two individuals last legislative session. These reviews are desktop reviews, and the inspectors do not go onsite. The committee was informed that there are enough employees for the present program, but if oil pipelines were included, the PSC would need more employees. The number of inspectors is determined by PHMSA through a formula. The formula is the number of miles of pipeline divided by 20 to determine the number of inspection days.

Hazardous Liquids Pipeline Jurisdiction

Hazardous liquids include crude oil, refined petroleum products, and highly volatile liquids; for example, butane, ethane, and propane. In North Dakota, the regulation of intrastate liquid pipelines is different from the regulation of gas pipelines. Instead of the state inspecting and regulating the pipeline as is done for gas, in this state PHMSA has jurisdiction over liquid pipelines. As for interstate pipelines, the regulation is the same and is done by PHMSA. At least five states are interstate agents for PHMSA for interstate regulation, but this state is not one.

The committee received information on the Tesoro pipeline leak near Tioga. The preliminary report on the spill was that it was caused by corrosion. The leak must be reported by the company within 24 hours, and the company reported the leak to State Radio. The State Department of Health was told initially that 750 barrels had been spilled, but after the company did more assessment, the department was told the estimated leak was 20,000 barrels. The Tesoro spill was 20,600 barrels of oil. The leak was immediately bermed, diked, trenched, and contained. The spill did not get into any water system.

The method of remediation is to remove all the dirt down to at least 30 feet, cook the dirt at 1,600 degrees Fahrenheit, and put the dirt back in place. Tesoro worked with soil professors from North Dakota State University to make sure the soil is rejuvenated by microbes and nutrients. This process will go on for at least two years, 24 hours a day. The State Department of Health visits the site at least once per week. The committee was informed that the quantity of this spill is not as important as where the spill occurs and getting rid of the contamination. This spill fortunately did not affect a water system.

The committee was informed that the prevention of leaks in a pipeline comes down to design, construction, and maintenance. Committee discussion included that the federal government does not have as many resources as in the past, and state agencies get blamed for what the federal government has jurisdiction over. It was urged that this state has to do more and this may include the PSC taking jurisdiction over oil pipelines so that this state ensures pipeline safety.

The PSC recommended the state should regulate intrastate hazardous liquid pipelines. Having the PSC take over hazardous liquids would be analogous to the PSC's program for natural gas. Committee discussion included that the PSC can regulate intrastate hazardous liquid pipelines without legislation.

Public Service Commission

The PSC regulates rates for common pipeline carriers for crude oil, coal, or gas purchased or sold in this state. Under Section 49-02-01, the PSC regulates "pipeline utilities engaged in the transportation of gas, oil, coal and water." Under Section 49-02-01.2, the PSC may establish minimum safety standards for gas distribution facilities and intrastate pipeline facilities used for gas or liquids, regardless of whether the pipeline is owned or operated by a public utility. However, under state law, the regulation may not be more stringent than federal law. Under Section 49-02-02, the PSC may cooperate with the federal government for the regulation of safety standards for pipeline facilities and the transportation through those pipeline facilities.

The PSC may order an operator to take corrective action if the pipeline is hazardous to life or property. In addition, under Section 49-07-05.1, the commission may impose a civil penalty not to exceed $200,000 for each violation for each day, with a maximum of $2 million, for a violation of rules under Section 49-02-02.1.

Under Chapter 49-19, the PSC regulates common pipeline carriers. Under Section 49-19-01, a common pipeline carrier is a person operating a gas or liquid pipeline operated for hire or from the place of production to any distributing, refining, or marketing center or reshipping point. The term includes a person who transports natural gas through right of way granted through eminent domain or a person is a common carrier under federal law. One benefit of being a common carrier is the availability of eminent domain and the use of public right of way. However, the rates of the common carrier are regulated.

Although eminent domain and siting are fairly mutually exclusive concepts, a pipeline company must be a common carrier to be entitled to exercise 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 route permit from the PSC.

Chapter 49-22 provides for the siting of energy conversion and transmission facilities. Under Section 49-22-03, a transmission facility includes a gas or liquid transmission line and associated facilities, but does not include an oil or gas gathering system, a pipeline with an outside diameter of 4.5 inches or less that will not be trenched, or a pipeline less than one mile long. A gathering system includes pipelines used to collect oil from the lease site to the first

pipeline storage site and pipelines used to collect gas from the well to the gas processing facility that produces end-use consumer-quality gas.

Under Section 49-22-16, the issuance of a permit is the sole route approval required to be obtained by the utility. A permit for the construction of a pipeline within a designated corridor may supersede and preempt any local land use; zoning; or building rules, regulations, or ordinances upon a finding by the commission that the local rules, regulations, or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economies, or needs of consumers regardless of their location. Without this finding, a route may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances. In addition, the pipeline must obtain state permits required to construct and operate the pipeline and must follow the rules of any state agency.

Industrial Commission

The main regulation by the oil and gas industry by the Industrial Commission is contained in Chapter 38-08. Under Section 38-08-02, an underground gathering pipeline is a gas or liquid pipeline, including water, associated with the production of oil and gas that is not subject to PSC regulation. In addition, water and wastewater from drilling activities is not regulated under federal pipeline safety rules and states may regulate. Under Section 38-08-26, the commission has created a geographic information system database for pipeline shape files. The owner or operator of an underground gathering pipeline must submit the file to the commission. The files are confidential but may be used by the commission, the landowner or tenant of the property on which the pipeline is located, and the Tax Commissioner.

The committee was informed that the Industrial Commission undertook the largest rulemaking ever undertaken by the commission. The rules provide for the regulation of newly constructed underground gathering pipelines. This is for pipelines from the edge of the well site to the transmission pipeline or a processing plant and not for pipelines on the well site. The rules relate to all underground gathering pipelines, including freshwater and saltwater.

The rules provide that the pipelines must be made out of materials that resist external corrosion and corrosion from the transported fluids. The pipelines must minimize interference with agriculture, road and utility construction, the introduction of secondary stresses, and the possibility of damage. The buried pipelines must be locatable through electric current, and trenches must be properly backfilled. The number one complaint received as to pipelines is improper backfill and reclamation of trenches.

The program is a self-certification program, which requires geographic information system information and an affidavit within six months of completion. The information on an underground pipeline placed into service from August 1, 2011, to June 30, 2013, must be filed by Thursday, January 1, 2015. This is about 4,300 miles of pipeline.

An operator is subject to a fine of $12,500 per day, and a purposeful violation could be a felony. The penalties will incentivize the use of competent contractors. Enforcement will be done through spot checks as the pipeline is being constructed. Three new field inspectors will be hired to implement these rules.

The Department of Mineral Resources informed the committee that five years ago, there were two to three complaints per year. Now there are 15 complaints that are not finalized. In the past, the theory was to have the company use the money that it would have to pay for a fine to correct the problem. This is no longer the case, and complaints are being filed sooner.

The rules provide for basic abandonment and reclamation rules. The operator is required to leave the pipeline in a safe condition. The operator must disconnect and isolate the pipeline from any operating facilities or other pipelines. The pipeline must be cut off below the surface at pipeline level. The pipeline must be purged with freshwater, air, or inert gas to remove fluid contaminates. The cathodic protection must be removed. The ends must be plugged or capped by mechanical means or weld. There must be a self-certification and location provided upon the abandonment of a pipeline. The committee was informed that removing the pipeline can be part of the right of way negotiation; however, removal can be more damaging than purging and leaving the pipeline in the ground.

Committee discussion included that this state is being watched as to how it regulates industry and to date the industry is regulated and responsive.

One-Call Notice System

The geographic information system database is separate from the One-Call excavation notice system in Chapter 49-23, although both provide the location of pipelines. The notification center does not know the location of underground facilities but knows the underground facility operators in the area and notifies these operators of a locate request by an excavator. The operator uses an online-based mapping software that the operator logs into and draws polygons in areas where the operator has underground facilities. When an excavator calls the One-Call center, a

person at the center draws a polygon on a map of the excavator's dig site based on the information provided by the excavator. The software will populate a list of operators whose polygons intersect the one drawn by the person at the call center. All the information provided by the excavator is sent to each of the operators that have facilities in the dig area as a "ticket." It is then the operator's responsibility to locate the lines through staff or through contract locators.

The number one cause of pipeline leaks is damage caused by a third party. If there is a fine of a small amount for a One-Call violation, it is not cost-effective to litigate to collect the amount through the court system. The committee was informed that the PSC may need legislation to go after the license of individuals violating the One-Call system.

Spills

Saltwater Spills and Leaks

The committee received testimony on salt damage in Bottineau and Renville Counties. There are two situations that created the salt damage. The first is from old oil well pits that were trenched as a form of remediation. The second is from a saltwater pipeline spill. In particular, there was one large spill in Bottineau County. In both instances the salt caused damage because brine water spills have salinity that is over 10 times saltier than sea water.

The committee was informed about old wells. Most of the salt damage that occurred was on wells drilled in the 1950s and 1960s. Between 1951 and 1984, waste pits were unlined and were reclaimed by trenching and draining the liquids. Between 1984 and 1994, the liquids were removed and the solids were buried. The pit was not trenched and the reserve pits were lined. Between 1994 and 2012, the pits were lined and the liquids were removed prior to disposal and the cuttings stabilized, typically with fly ash and lime, and buried. The main issue with this process was that it took over a year to dry and the number of open pits was growing. Since 2012, the pits are lined and the cuttings are stabilized, encapsulated, and buried. Because of the actions taken, the size is one-fifth the size of a previous reserve pit.

The committee was informed that the Bakken wells are very salty and Bakken wells are in areas with shrinking and swelling clays which are most affected by salt. This state has the saltiest water and the most shrinking and swelling clays.

The committee was informed about the saltwater pipeline spill. The saltwater pipeline leak involved a pipeline that went to a disposal well that was created in the 1980s. The committee was informed that the installation of the pipeline was rushed, non-engineered, random, and unprofessional. In addition, remediation efforts are lacking. The committee was informed that the landowner's failure to give easements is not all fatigue, but includes being scared of spills, especially saltwater spills.

Landowners argued that there needs to be a better system that provides protection, not necessarily more regulation. It was argued that there is regulation but no policing. It was argued that there needs to be more monitoring, more enforcement, and stiffer penalties for spills.

The committee was informed of remediation efforts and possible means of remediation. There are two ways to deal with a salt spill--remove the salt or push the salt down. Removal may be done with a flood of water with drain tile and pumping the saltwater out. This process is very expensive to install. The estimated cost for drain tile and saltwater disposal for a site in a 1985 study was $25,000. Calcium can be used to push the salt down. However, salt follows the water table down, and when the water table comes back up, the soil is bad again after it has been reclaimed. Landowners affected by salt spills were hesitant to endorse any method of remediation because none seemed to bring back the land to the previous level of production. It was suggested one way to deal with the issue is to have a fund that does a couple of projects a year.

For there to be remediation to a previous state, there needs to be baseline information on which to base reclamation. Landowners requested an accounting of the acres affected by salt. It was argued that the state has money to address old problems and save for future problems. It was argued that regardless of when the damage occurred, the state needs to protect the land for future generations.

As for Bakken wells, the amount of saltwater coming out of the ground is about the same as the amount of oil. Approximately half of the saltwater is disposed of through trucks and half through pipelines. Two of the significant spills in the Bakken were new systems that were not properly installed.

Railroad Spills

The committee remained updated on the Burlington Northern Santa Fe Railway Company spill near Casselton. The spill will be remediated by digging up and disposing of the soil. The contaminated soil is approximately 9,000 cubic yards. Remediation was expected to take under a year.

The committee received information on spill reporting by the State Department of Health. The issue was brought to light due to the train spill near Casselton and a delay in notifying the press. The committee was informed that the department wants to be transparent and the department is working on providing spill data on the website to the public. The website will have two databases--one back to 1975 and one for the last 12 months. The department set a threshold for a news release of when a spill impacts water, affects the public safety, or if 150 barrels or more is spilled.

The department was working on this before the leak but accelerated the project. The department was working on the issue because of the numerous requests for information on leaks. There are 1,500 spills to 1,600 spills this year, and the majority are small. This state requires that everything is reported and therefore has a high level of incidents. The list of spills includes agricultural spills and hydraulic hose bursts. However, the department is not involved with a spill on a well pad because that is the jurisdiction of the Department of Mineral Resources.

The committee was informed that records for saltwater spills need to be updated because the spills spread over time. In addition, the spill record is of the barrels of the spill, not the concentration of salt in the spill.

Committee discussion included a request that the State Department of Health coordinate with the Oil and Gas Division so reports of spills on and off of well sites are reported in the same manner. The committee was informed that the Oil and Gas Division has a spills form and the State Department of Health accepts that form.

The committee was informed that the landowner is notified immediately of a spill. However, adjacent landowners are also notified if in harms way but are not notified otherwise. Adjacent landowners may contact the department, and the department will meet with adjacent landowners.

The committee was informed that the oil on trains today is much more stable than in recent history because it is being closely monitored and handled as is appropriate. The oil is being monitored as to the vapor point by the loading terminals because of insurance requirements. Train-loading facilities are in the planning stages to process oil before loading.

Saltwater Spills by Haulers

The committee was informed of incidents in which a hauler of saltwater had illegally dumped saltwater. The committee was informed that the Department of Mineral Resources was looking at better tracking of the waste. This state does not have a tracking process, but good companies do keep records.

The idea of having a hauler sign off when filling waste and dumping waste has been considered, but the procedure is easy to cheat. In Pennsylvania, all waste haulers are licensed and there is GPS on the trucks that transmit the weight of the truck and the location of the truck. The Department of Mineral Resources may recommend legislation to license all saltwater haulers and to require GPS with location and weight information. The saltwater hauling business is lucrative, and civil penalties are not that much of a deterrent. The department has pursued felony charges when a hauler has been caught in the act of illegal dumping and a felony conviction puts the business out of business.

Flaring

The committee received a report that was the result of meetings of the North Dakota Petroleum Council Flaring Task Force. The goal is to have 85 percent capture within two years and 90 percent capture by 2020 with the potential for 95 percent capture. The reduction in flaring will be accomplished through expanded processing, building out capacity, operation efficiencies, and value-added North Dakota markets. At the time of the report, flaring was 29 percent of state gas production, and 60 percent of flaring is from 216 well sites. Eighteen percent of natural gas that is flared is at wells that are connected to pipelines and the pipelines are insufficient in these instances.

The national average for flaring is 1 percent, but the committee was informed that comparing that to North Dakota is not fair. The Eagle Ford play is three plays: a gas play, natural gas liquid play, and oil play. The flaring under the oil play is 15 percent. The average flaring in Texas is 1 percent. The reason for the reduced flaring is the nearby location of refining and processing plants that are underutilized. In North Dakota, there was no infrastructure when the Bakken play began, and all of it has to be built.

The largest delay for connecting gas lines is securing landowner permission. To address this issue, the committee was informed that the Industrial Commission will develop and manage a hotline for reporting surface owner issues related to pipelines.

The report suggested the following legislative actions:

- Incentivize rapid buildout capacity for gas infrastructure through property tax incentives, low-interest loans, and production tax credits for producers.

- Incentivize intrastate value added markets through technological innovation and an infrastructure development fund.
- Support dense phase, high-pressure export pipelines to take gas to major markets without taking out the liquids.

The Industrial Commission made flaring rules. A gas capture plan is required with a permit to drill after June 1, 2014. The rules create flare capture targets. These targets are:

- October 1, 2014: 74% capture (26% flaring)
- January 1, 2015: 77% capture (23% flaring)
- January 1, 2016: 85% capture (15% flaring)
- October 1, 2020: 90% capture (10% flaring)

If the capture targets are not met, production restrictions are put in place. The restriction is 200 barrels per day if at least 60 percent of monthly produced gas is captured and 100 barrels per day if capture is below 60 percent of monthly produced gas.

The committee reviewed potential technologies and successful remote capture projects. Technologies exist that can be deployed to utilize flared gas, providing small incremental benefit to gas utilization. Gas flaring is the result of many factors, and each technology can address different challenges and can improve gas capture under certain conditions. The committee was informed that there is great promise in absorption towers.

The task force recommended separate tracking and reporting for tribal and nontribal wells. Six to seven percent of the 29 percent of flaring is on the reservation. There is 70 percent flaring on some parts of the reservation. For this to be reduced, the state needs to work with the federal government and tribes.

Propane

The committee was informed of the reasons for the shortage of propane at certain times. The committee was informed of a recent spike in prices which was caused by a huge demand and record cold. The extremely high prices were for approximately two weeks. The reason for the shortage was demand. In addition to this baseline, approximately 40,000 homes and approximately 1,000 to 2,000 businesses in this state use propane. Propane is used for drying corn. One corn drying system uses as much propane as a home may use in a year. A corn drying system may use 1,000 gallons of propane per day. Other reasons include that the demand for propane is increasing because the eastern part of the country is moving from heating oil to propane, an oil well uses 250,000 gallons of propane from completion to the end of fracking, and the United States exports 10 to 12 percent of the propane produced in the United States on an annual basis. This was increased to 25 to 30 percent this year because of the demand by China and Japan.

The committee was informed that the Hess - Tioga plant will produce approximately 17,000 barrels a day of propane. If Hess sees a market in this area, it will keep propane in this area that is needed. Not a lot of propane is stored in North Dakota. There are 10 million gallons stored at the Kinder Morgan storage area and the Hess plant at Minto has deep caverns.

Committee discussion included that consumers see gas being flared and high propane prices and may not understand the investment and processing needed to fractionate propane out of the gas stream.

Environmental Regulation

The committee received information on the climate action plan. The climate action plan contains three main pillars:

1. Cut carbon emissions in the United States.
2. Prepare for the impacts of climate change.
3. Lead international efforts to combat climate change and prepare for its impacts.

The first phase of the plan under Section 111(b) of the Clean Air Act, emphasis will be to establish carbon emission standards for new power generation facilities. The federal Environmental Protection Agency (EPA) believes the new natural gas-fired stationary combustion turbines can meet the proposed standard without the need for add-on control technology. Fossil fuel-fired boilers will require the implementation of partial carbon capture and storage. The EPA believes that with current and planned technology implementation of carbon capture and storage projects, combined with the availability of geologic storage sites, the proposed standards may be met. The State Department of Health had an initial concern with the cost and long-term viability of some of the technologies being proposed.

The second phase is for existing power generation facilities under Section 111(d) of the Clean Air Act. This is a state-based program for existing sources where the EPA establishes guidelines and states design programs to fit the unique circumstances of the state. On June 2, 2014, the EPA issued proposed rules on existing source guidelines for limiting carbon dioxide. The proposed rules for Section 111(d) are intended to be final by June 2015.

The EPA rules call for a 30 percent reduction in carbon dioxide by 2030. North Dakota currently produces 1,994 pounds per megawatt-hour for all sources. The EPA wants reductions to 1,817 pounds per megawatt-hour by 2020 and 1,783 pounds per megawatt-hour by 2030. The EPA has provided a number of options for achieving the goals. One way to achieve the goals is to change fuel sources from coal to natural gas. The coal can be used, and there can be offsetting through renewable resources. There is a chance that the growth in wind energy production will aid in significantly reducing the amount of carbon dioxide to the level it needs to reach under greenhouse gas regulations. Efficiency can be used, but it is difficult to verify or account for energy efficiency gains.

Coal-fired electricity generation has become more efficient, and increased efficiency reduces the overall carbon dioxide released per unit of energy. It was argued that coal-fired plants that have increased efficiency should be given credit for what they have already done.

Drying coal produces less emissions and lowers carbon dioxide and the main customers for this technology are in China. Electric plants in the United States are inhibited from investing in this technology because there is not any certainty as to regulation by the EPA. If a coal plant uses clean coal technology and it is not good enough, there will be stranded costs and consumers will have to pay for the stranded costs in rates.

In short, the facilities we have today will not be built in the future due to carbon dioxide regulation and the jury is still out as to what will happen with existing plants.

Hydraulic Fracturing

The committee was informed the potential rules by the EPA and the Bureau of Land Management on hydraulic fracturing. The committee was informed that the concern with frac jobs started affecting water with the use of frac jobs in coalbed methane. Coalbed methane is near the surface and there is water in the coalbed. Diesel fuel was used as the frac fluid. Frac jobs in this state are two miles under the ground and use much less diesel fuel. There is .08 percent of petroleum distillate in the frac fluid.

The EPA guidance on diesel fuel in hydraulic fracturing could more than triple permit approval time. If fracturing rules regulate wells as Class 2 underground injection wells, there will need to be a hearing, order, and permit before the frac job and an undoing of those actions after the frac job. This will increase the time for permits from 20 days to 60 days.

The Bureau of Land Management hydraulic fracturing rule could more than double permit approval time. Twenty percent of production in this state comes from the Fort Berthold Reservation. Most of the land is allotted lands owned by individuals. The Bureau of Land Management has trust responsibility, but is treating these lands the same as fully owned federal lands. Eighty to ninety percent of Bakken spacing units have federal minerals. These federal minerals were taken back from farmers and ranchers in the 1930s. The proposed rules require the bureau to approve where water comes from, the route the water takes, and where the frac flowback is disposed.

Electricity and Transmission

The committee kept informed of a number of key projects. Montana-Dakota Utilities Company has been issued a certificate of site compatibility for an 88-megawatt gas turbine electric generator at the Heskett Station in Mandan. Basin Electric Power Cooperative has been issued a certificate of site compatibility for two 45-megawatt gas turbine electric generators at its Pioneer Generation Station northwest of Williston. Basin Electric has also filed a letter of intent for two additional 45-megawatt gas turbine electric generators to be located at Basin Electric's Lonesome Creek Station west of Watford City.

Over 70 percent of the load growth in the Williston Basin is the result of the Bakken oil play. There will be approximately a 9 percent increase per year from 2011 to 2025 from oil related entities. Each year there is an increase of over 130 megawatts of demand. The options to meet growth include building transmission lines, building generation facilities, entering power supply contracts, and joining a regional transmission organization.

The Minnkota 345kV line from Center to Grand Forks and the NSP CapX2020 line from Monticello to Fargo have been sited and are under construction. CapX2020 shores up reliability in eastern North Dakota. The next 10-mile line from Ellendale to the South Dakota border opens up the availability to transport energy from wind and from a coal mine in the center part of the state.

The committee was informed that recently certificates of site compatibility have been issued, and construction is underway or is expected to begin soon on 814.5 megawatts of new wind generation. The PSC issued a certificate of site compatibility for the 150-megawatt Thunder Spirit Wind Project near Hettinger and the 204-megawatt Bison 4 Project near Center.

Enhanced Oil Recovery

The committee was informed that enhanced oil recovery is the next phase of development for the Bakken. Around 5 to 6 percent of oil is recovered from the Bakken and an increase in production of 1 percentage point would provide 3 billion to 5 billion barrels of oil. Carbon dioxide is the leader for enhanced oil recovery because carbon dioxide mollifies Bakken oil very well in tests. Nitrogen was leading for a few years but has been found to be not compatible with Bakken oil. The committee was informed that there are pilot projects in the Parshall field using water.

The committee was informed that the demand for carbon dioxide to fully apply enhanced oil recovery in the Bakken Formation is 2 billion to 3.2 billion tons. This would conservatively yield 4 billion to 7 billion barrels of incremental oil. The main concern of the oil industry is not the technology, but having enough carbon dioxide. The output of carbon dioxide of all the power plants in this state is 33 million tons.

Transportation

The committee received updates on DOT projects in the western portion of this state to review what DOT was doing to meet the infrastructure needs. The committee was informed the total traffic count has increased 422 percent from 1950 to 2010 for certain roads in western North Dakota. Truck traffic has increased 22 percent statewide and 53 percent in the west from 2010 to 2012 and is still increasing. In addition, the size of loads is increasing. An increase in weight of 10 percent on a tandem axle increases the damage to the road by 44 percent. To address the transportation infrastructure needs, the Legislative Assembly appropriated approximately $2.3 billion for highways, with approximately $1.64 billion for highways on the state highway system and $617 million for highways in cities, counties, and townships. There were over $878 million in projects during 2013 by the state and political subdivisions.

The committee received information on numerous road projects including the Williston northwest bypass, the Watford City State Highway 23 southeast and United States Highway 85 southwest bypass, the Alexander bypass, the Dickinson interim bypass, and the New Town northeast bypass. The committee focused on United States Highway 85. The committee was informed that for the United States Highway 85 from Watford City to Williston project, the major concern is environmental challenges. Because the new bridge near the old Lewis and Clark Bridge by Williston affects pallid sturgeon, there needs to be a very indepth biological assessment requiring a separate federal environmental determination by the United States Fish and Wildlife Service, the Federal Highway Administration, the Army Corps of Engineers, and the Coast Guard. After environmental clearance, it will take two years to two-and-a-half years to build the bridge so there will be four lanes up to the present bridge without a four-lane bridge for a few years.

Another concern is wildlife. A wildlife crossing will be required at the cost of $4.5 million to $5 million for one crossing. The situation on United States Highway 85 south of Williston is the Game and Fish Department is leasing land from the federal government for two wildlife management areas and the road bisects these areas and a wider road will further separate these two areas. The wildlife crossing is one structure that will allow large game under the road and will also include a fence system maintained by the Game and Fish Department.

The committee received information on the Upper Great Plains Transportation Institute, study on the infrastructure needs for county, township, and tribal roads and bridges in this state. The study found statewide need for unpaved road investment for the next 10 bienniums is $5,398,400,000. The unpaved road investment needs in the oil patch for the same time period is $2,909,400,000. The need for investments in paved roads for the next 10 bienniums is $2,685,000,000 statewide and $1,162,000,000 in the oil patch. The needs for the 2015-17 biennium for the gravel roadways are $548 million, for the paved roadway are $377 million, and for the gravel-to-pavement option is $58 million. The total needs for the 2015-17 biennium, excluding bridges, are $983 million.

The committee was informed that the gravel-to-pavement option is for certain roads for which a cost-benefit analysis shows the roads should be changed from gravel to pavement. For the gravel-to-pavement roads, all had 500 trucks per day, and the amount will stay high. The study provided information so that governmental entities can decide whether roads should be paved based upon the review of the truck counts.

Transfer of Maintenance of County Roads to the Department of Transportation Bill Draft

The committee considered a bill draft on transferring highway maintenance from counties to DOT. The committee was informed about the relationship between the county road system and the state highway system. The committee was informed that DOT works closely with counties for a more integrated system. It was argued that when reviewing a

county's road to determine whether it should be transferred to DOT, the whole county needs to be reviewed because there may be roads that are maintained by the state that should be county roads.

The committee was informed that DOT is limited to the number of miles in the state highway system and to which roads can be placed in the system. At present, there are roads being added to the system through the new bypasses. After the bypass construction, there will be 56 miles of state highway available under the law. The Department of Transportation looks at the lifetime of the road when considering to add it to the state highway system, so heavy traffic when there is drilling is not a justification for adding a road to the system. However, DOT is revisiting adding roads to the system that have been previously rejected for addition to the system.

The committee was informed that the bill draft did not solve the problems counties have in maintaining county roads. It was argued that a mechanism or procedure should be available to formally consider whether routes warrant reclassification as state routes or some special consideration for funding improvements would be a better idea. The committee was informed that Section 24-05-18 provides for cost-sharing on county routes and does what most of what the bill draft does. The committee was informed that Section 24-02-36 limits the state's ability to expend state funds, and it would need to be amended for the bill draft to work.

The committee was informed the general intent of the bill draft was to provide an additional alternative for state assistance with road funding to counties and it was pointed out that a substantial increase in additional state road funding was provided to counties last legislative session. The bill draft would require the DOT budget authority to be adjusted to expend funds received from counties for doing maintenance for the county or DOT would have to fund the county maintenance work. The Department of Transportation would be required to outsource this work. In addition, if DOT took over county roadways, DOT would have to establish load limits, set a speed limit at 65 miles per hour, maintain road access control, and upgrade county roads to meet the state system standards.

Committee discussion included that the transfer could place a great burden on the state. However, it was suggested that the bill draft is a good idea in that it allows, not mandates, the transfer.

Recommendations

The committee recommends Senate Bill No. 2032 to create an oil and gas development strategic planning authority. The authority would be governed by the Industrial Commission and the authority would serve in an advisory capacity to the commission. The authority would develop a comprehensive strategic plan to address oil and gas-affected communities' needs. The focus of the authority's attention would be on infrastructure needs. The authority's duties would be to collect information and create and update a plan by analyzing funding, programs, and incentives.

The committee recommends Senate Bill No. 2033 to provide supplemental funding to political subdivisions if oil and gas tax revenues exceed legislative forecast. The bill provides an automatic trigger mechanism and an appropriation if in the first six months of the biennium revenues exceed the forecast by 20 percent or more. There would be a $200 million appropriation available April 1, 2016, from the strategic investment and improvements fund to oil and gas-producing political subdivisions to be allocated using the current funding formula, but the funding would not be counted against the formula caps.

The committee recommends Senate Bill No. 2034 to create a sales and use tax exemption for materials used for oil gathering pipelines.

The committee recommends Senate Bill No. 2035 to create a sales and use tax exemption for tangible personal property used for a fertilizer or chemical processing facility producing fertilizer from natural gas or crude oil components. The bill would be retroactive to include all of 2015.

The committee recommends Senate Bill No. 2036 to provide for an exemption from the coal conversion facilities privilege tax for beneficiated coal used within a coal conversion facility and to remove the sunset on the sales and use tax exemptions for beneficiated coal and the severance tax exemption for coal used in certain plants.

The committee recommends Senate Bill No. 2037 to increase the factor used to determine taxable valuation for property tax purposes for wind generation units commenced before January 1, 2015, and completed before January 1, 2017, from 1.5 to 3 percent, to provide a grace period for the income tax credit relating to those wind towers, to remove the sunset on the sales tax exemption for wind-powered electrical generation facilities, and to remove the $5 million cap on the sales and use tax exemption for new coal mines located in this state.

[The Legislative Management rejected the following portion of the report. That portion of the report is printed here pursuant to Rule 5 of the *Supplemental Rules of Operation and Procedure of the North Dakota Legislative Management*.]

The committee recommends a bill that creates a licensing process for commercial drill cuttings recyclers that would be administered by the State Department of Health. The bill provides a reduction in the extraction tax if the well operator causes 75 percent or more of the drill cuttings to go to a recycler, the first 50,000 barrels of oil produced during the first 18 months after completion would have a reduced tax rate of 5 percent, instead of 6.5 percent. If the well operator also does not place any drill cuttings in a reserve pit near the well site, the rate would be reduced to 4 percent, instead of 6.5 percent. The incentive would sunset in two bienniums.

STUDY OF THE FUTURE OF THE OIL INDUSTRY

Section 8 of House Bill No. 1198 required the study of the likely changes to oil industry practices, production, impacts, and tax policy in the foreseeable future, with the Legislative Management to obtain the services of an independent consultant with demonstrated insight into current and future production advances, including use of carbon dioxide and water or other means of enhancing production; effects of mature production areas on state and local tax policy; future infrastructure needs; and environmental considerations.

The committee made a request for proposals and received two proposals. The committee chose KLJ to do the study for $125,000. The study contained three progress updates and a final report.

The final report provided an economic analysis of the Bakken/Three Forks Formation; information on the socioeconomic impacts of employment, population projections, and housing needs; and information on carbon dioxide enhanced oil recovery. Phase 1 of the study was a data gathering process that resulted in a list of baseline assumptions. Phase 2 was concerned with validating the assumptions. Phase 3 was to model and project future trends, draw correlations between trends and future infrastructure requirements, and summarize modeling and analysis. Phase 4 was the final report, based on a study period of five years into the future.

The study 2014-2019 trends forecast was that:

- North Dakota drilling levels will remain stable.
- North Dakota production could reach 2 million barrels per day.
- Oil prices will average between $70 and $100 per barrel.
- The global need for oil will absorb oil produced from United States shale.

The study found that the local and global economics:

- Result in drilling remaining concentrated in areas of high productivity potential.
- Will change if federal policies lead to increased drilling.
- Will be affected by high operation costs, slowing drilling in areas of lower productivity potential.

The study found that population growth potential will be:

- 25 to 32 percent in Bowman, Divide, Dunn, McKenzie, Stark, Slope, and Williams Counties.
- 15 to 24 percent in Adams, Billings, Golden Valley, and Hettinger Counties.
- 6 to 14 percent in Bottineau, McHenry, Mountrail, Renville, and Ward Counties.
- 0 to 5 percent in Burke, McLean, and Mercer Counties.

The study found that the housing need for:

- Williston is 16,000 housing units, requiring $480 million in subdivision infrastructure.
- Dickinson is 10,000 housing units, requiring $300 million in subdivision infrastructure.
- Minot is 6,000 housing units, requiring $180 million in subdivision infrastructure.

Technology changes that could affect production include:

- Three dimensional field development.

- Batch development.
- Adequately sized gathering systems.
- Reliable systems to move product to market.
- Field consolidation.
- Automation.

Environmental changes that could affect production include:

- State regulations in border states.
- Tribal regulations and development requirements.
- Flaring regulations.
- Local regulation of crude oil trains.

Policy issues that could affect production include:

- Crude export rule changes.
- The tightening of oil supply due to international conflict.
- Federal regulation changes on depletion allowances.

It was estimated that North Dakota oil production could reach 2 million barrels per day. Each month, the North Dakota per day oil production amount is increasing by about 18,000 barrels.

The committee considered information on the markets for North Dakota oil. Canada produces heavy crude, which is different from the light sweet crude of the Bakken. Refineries either refine heavy crude or light crude, but not both. The Keystone Pipeline is intended to transport heavy crude to the Gulf of Mexico because the Gulf refineries shifted to heavy crude. The Keystone Pipeline would not compete with Bakken crude. The committee was informed that the East and West Coasts have enough markets for Bakken crude. The committee was informed that there is some additional refining potential at Cushing, Oklahoma, but as midcontinental shale plays mature, these plays will use up the additional potential.

The export of finished product must be shipped on a United States flagship, and there are not many of these ships. The export of crude oil is not allowed by law. If exports are opened, the light sweet crude of the Bakken will be valuable in the international market. It was suggested that in the next five years, oil companies may be able to export light sweet crude.

The committee was informed that drilling activity is very sensitive to profitability. In the Bakken, the amount of initial production greatly affects the amount of time it takes for wells to become profitable. There is 40 to 50 percent depletion in the first year of a Bakken well. As such, there needs to be higher oil prices for profitability in certain wells that are not in mature Bakken areas. Another factor affecting profitability is the amount of wastewater a well produces. As wells move away from the mature Bakken, the oil-to-water ratio is less favorable. In addition, this increases infrastructure impact because of the truck movement of the wastewater.

The committee was informed carbon dioxide enhanced oil recovery is not expected to be employed at high rates and will not substantially affect oil development in the next five years. However, the Dakota Gasification contract for the sale of carbon dioxide expires in two years and older oilfields near the existing carbon dioxide pipeline are capable of using carbon dioxide for enhanced oil recovery.

The committee was informed that the population growth will be higher than the job growth. The forecasted increase in population is 4.3 percent per year for western North Dakota. Permanent jobs will increase rapidly throughout the study period and temporary jobs will stay consistent. The need for permanent housing is based on permanent jobs. Using a medium scenario for the growth of Williston from 2014 to 2019, there will be a need for 26,000 housing units. Under the same conditions, there will be a need for 6,000 housing units in Minot, and 10,000 housing units in Dickinson.

The committee was informed the amount of capital for growth in the Bakken is presently good and will get better. Conservative banks have begun to finance projects in the Bakken because of the predictability of returns and

regulations for the Bakken field. The industry is catching up on infrastructure because of the provision of new capital, including capital to midstream pipeline companies, but the infrastructure is at least one year behind.

The committee was informed it is harder to increase gas gathering than oil gathering capacity. Most gas gathering systems are overlaying two times the infrastructure to increase capacity. Oil gathering is designed with excess capacity, and there are other methods of increasing capacity. Large oil transmission lines are being built, and gathering systems will have multiple choices. The committee was informed that because of batch drilling and large initial productions there will be issues with pipeline capacity.

In the past, a rig has moved on site and then has called for a frac job and a gathering line. Now gathering lines can be put in place sooner because operators have more information earlier on in the process. This is because previous drilling was to hold leases, and presently 90 percent of the drilling is pad drilling. Because of this batch drilling, gathering lines may have to absorb output from eight wells in a single week and it is difficult to size the line because of the drop off in production. Drillers will try to stage drilling in different areas so there is not so much production coming on line in one area at one time.

Class I railroads are making significant improvements by installing double track. This allows agricultural traffic to bypass stored cars and over time, the railroads will be able to move more agricultural product. However, the rail industry cannot recover fast enough to meet the needs of the oil industry and there will be car shortages.

Twenty-one percent of the mature Bakken is not produced because it is on federal or tribal land. The committee was informed that there are many reasons why the tribe has not developed the oil and gas resources on the reservation. For example, the tribe requires powerlines on the reservation to be buried while overhead powerlines are allowed outside the reservation. Burying the line requires that it is double jacketed and cooled and this is not economical for oil producers. In addition, there are long tribal permit approval times and relationships are very important when working on tribal lands and building relationships take time.

ENERGY CORRIDOR STUDY

Section 41 of Senate Bill No. 2018 directed study of establishment of an energy corridor in the western portion of the state. This required committee examination of rights of way and state highway and county road easements and easements required to make United States Highway 85 a four-lane highway corridor to complement the development of energy transportation resources.

The committee was informed that DOT owns most of the right of way along United States Highway 85, but DOT has only an easement through national park property. Allowing the oil and gas industry to use highway right of way would put DOT in a position of competition against landowners for sale of easements. The Department of Transportation expressed opposition to being in the position of competing with landowners.

The current practice on easements is that DOT grants utility permits that are limited to utilities to use right of way. The law requires a utility to have a public purpose to permanently locate facilities in the right of way. These permits are generally to cross highway right of way laterally, with limited longitudinal use. These limits are in place to prevent future highway construction from being hampered by the placement of facilities in the highway right of way.

The Department of Transportation recently adopted a policy for allowing the temporary use of highway right of way for moving fresh water in temporary pipelines. This permit process allows for fresh water to be transported in the ditch. As a condition of transporting the water on highway right of way, there needs to be evidence of the pipeline company unsuccessfully seeking easements from private landowners or that the terrain on private land is unsuitable for pipeline placement.

The North Dakota Petroleum Council has created a right of way task force. The task force will address potential energy corridors, section line easements, and legislation to improve right of way access to reduce flaring.

Oil and Gas Production Tax to Certain State Highways Bill Draft

The committee considered a bill draft that would allocate $75 million per biennium from the oil and gas production tax to the state highway fund for major improvements and construction of highway corridors impacted by energy development, with a priority of enhancement to four lanes for United States Highway 85. The $75 million would be from the first percentage point of the 5 percent production tax to avoid decreasing revenues allocated among political subdivisions. The money in the fund could build over time.

Committee discussion highlighted the intent that the bill draft is to build up money for projects while waiting for the projects to begin. The southern portion of United States Highway 85 would be a priority to increase to four lanes and

this funding source would assure that there will be money to do it. The $75 million amount was chosen because it is considered a reasonable amount to draw from production tax revenues without impact to allocations to political subdivisions or other allocations from revenue anticipated to be generated by the production tax.

Committee discussion included some opposition based on the argument that it is not appropriate for the Legislative Assembly to choose one project over another and that DOT has a mechanism to prioritize projects. It was argued that the bill draft is an example of legislative micromanaging and the Legislative Assembly should set policy and the executive branch should execute the law. Committee discussion also included the counterpoint that United States Highway 2 would still be two lanes if the Legislative Assembly had not required it to be four lanes because DOT had prioritized that highway for only two lanes. In addition, the Western Area Water Supply Authority was prioritized by the Legislative Assembly despite State Water Commission reluctance. It was argued that the Legislative Assembly has the benefit of being more in touch with the wishes of the public than agencies.

Recommendation

The committee recommends House Bill No. 1031 that would allocate $75 million per biennium from the oil and gas production tax to the state highway fund for major improvements and construction of highway corridors impacted by energy development, with a priority of enhancement to four lanes for United States Highway 85.

PERMITTING, REGULATION, AND SITING OF OILFIELD LANDFILLS AND THE DISPOSAL OF WASTE STUDY

As part of the study of permitting, regulation and siting of oilfield waste landfills and the disposal of waste related to oil and gas development, the committee examined issues regarding radioactive waste and oil field waste.

Radioactive Waste

Radioactive material is generated from the physical process of concentrating naturally occurring radioactive materials during oilfield development. This radioactive material can collect in many areas, including filter socks, pipe scale, and sludge found in tank bottoms. The amount of radioactive waste is between 10,000 tons and 15,000 tons per year. At present most of this comes from filter socks, which concentrate radioactive material in the flowback water, but in the future more will come from sludge and scale. Much higher concentrations of radioactive waste will be in tank bottoms and pipe scale, than is collected in filter socks. This material necessitates special handling and disposal. In the North Dakota Administrative Code, a material is defined as radioactive if it exhibits a radioactive concentration of five picu/gram or more. This state has the tightest standards in the nation as it relates to radioactive waste. This concentration is considered very conservative and may be close to background concentrations.

Pursuant to state rule, any material that exhibits a radioactive concentration above this level must be transported to a facility approved to handle this waste. The only facilities approved to handle this waste at this time are located out of state. The vast majority of this waste in North Dakota goes to Colorado, but some goes to Montana and some goes to Texas. The committee was informed that the State Department of Health was studying this standard through the Technologically Enhanced Naturally Occurring Radioactive Material Task Force. The task force is reviewing whether the generation, handling, and design pose a risk to the public health.

The committee investigated an incident of radioactive socks being improperly disposed by a person who was in the business of disposing of socks and who dumped collected socks in an abandoned building in Noonan. Soon after the discovery of the dumping of filter socks, the Oil and Gas Division required disposal wells to have a receptacle for filter socks. This was intended to remove any economic temptation to illegally dump the socks. In addition, the State Department of Health made it known to the public that if a person finds a filter sock and reports it, the department will notify an oil company and the oil company will pick up the sock even if it is not that oil company's sock.

The committee discussed the suggestion that this state should deal with waste material created in this state. However, the committee was informed there will always be a need for some waste to be shipped out of the state because of its high concentration of radioactivity.

Oilfield Waste

The committee explored the disposal of oil field waste on and off the spacing unit. The State Department of Health does not regulate oil waste pits on the well site. This is done by the Department of Mineral Resources. However, the State Department of Health regulates regional special waste landfills. The cuttings pit is usually on the well pad. Approximately 93 to 95 percent of cutting pits are on drill pads and 6 to 7 percent are on the spacing unit off the drill pad. Although recording of the location at the county recorder of dry cuttings pits is required by law, the committee was informed that this does not happen all of the time. The newer pits are larger because of multiwell pads so the chance of affecting a landowner in the future is greater.

Funding for Abandoned Oil and Gas Well Plugging and Site Reclamation Fund Bill Draft

The committee considered a bill draft that would raise the deposit in the abandoned oil and gas well plugging and site reclamation fund from an amount not exceeding $5 million to an amount not exceeding $10 million per year. In addition, the bill draft would raise the cap for the fund from $75 million to $100 million. The money would come from the first percentage point of the 5 percent oil and gas gross production tax.

There are about 8,500 reclaimed sites in western North Dakota and most of these sites show no trace of the oil activity. There are approximately 3,000 abandoned pre-1981 sites. Of these 3,000 sites, 30 to 60 were described as pretty rough. The fund has been expanded to include remediation for saltwater wells and pipeline spills. This has added liability to the fund. It would be very expensive to clean up some of the old sites and could use the entire fund for one site. The committee was informed that a possible future phase for the reclamation fund will be to clean up old sites.

Crude Oil and Natural Gas Exploration Landfills Bill Draft

The committee considered a bill draft that would remove the special election vote option of a county which could prohibit a permit for an oil and gas exploration landfill from being issued by the State Department of Health.

Committee discussion included the suggestion that the bill draft is appropriate in eliminating the option of requiring waste created in a county to be disposed of elsewhere. The law at present provides for a "not in my backyard" vote and the bill draft would remove that option.

The committee received testimony in opposition to the bill draft. The committee was informed that the process is working well and that the special election has only been used once, and in that instance the result was that the landfill was allowed. Under the present provisions of law, landfills have been sited and the present landfills have enough capacity for more than all the special waste that could be created. There may be no need for new special waste landfills. Even if a new landfill is needed, it was argued that local control allows for a review that takes into account local knowledge. Another factor affecting special waste landfills is the potential growth of drill cuttings recyclers, which could remove most of the waste created in well drilling.

Recommendation

The committee recommends House Bill No. 1032 that would raise the deposit in the abandoned oil and gas well plugging and site reclamation fund from an amount not exceeding $5 million to an amount not exceeding $10 million per year. In addition, the bill would raise the cap for the fund from $75 million to $100 million.

STUDY TO EVALUATE VALUE-ADDED MARKET OPPORTUNITIES FOR NATURAL GAS LIQUIDS AND ETHANOL

The committee received a report from IHS Chemical on the study to evaluate value-added market opportunities for natural gas liquids (NGLs) and ethanol. The most important finding of the study is that there is enough feedstock available at competitive prices for there to be a petrochemical company in this state. The availability of feedstock and the price in North Dakota are the drivers for value-added petrochemical companies in this state. It was suggested that the way the state could incentivize a plant is providing easy permitting, labor resources, and support of general infrastructure surrounding the plant. The committee was informed that infrastructure and labor give companies the confidence to build a plant.

The products created by petrochemical companies are fungible and do not create issues for transportation and can be transported safely by rail. The plastics made by a petrochemical plant could be made into water pipes and other products that could be manufactured in this state.

The difference between NGLs and ethanol is that there is not a feedstock advantage in North Dakota for ethanol. Ethanol plants are small in relation to petrochemical plants. The drivers are different as well. The driver for ethanol chemical plants is the demand for environmentally friendly products. The price premiums for environmentally friendly products are expected to go away within five years. The committee was informed that these premiums are not reliable.

The committee was informed that it takes approximately $25 million to convert an ethanol plant to make chemicals and would take around 18 months to complete. It would take two to three years for new construction at a cost of over $100 million. The committee was informed that other states have incentives to provide low-cost capital, tax credits for job creation, and job training. In addition, an ethanol chemical plant in this state would be competing against much larger conventional plants for the creation of complex carbon chains.

Committee discussion included comments that the opportunities brought to light by the report have the potential to provide opportunities for graduating students to obtain a high-paying job and to remain in North Dakota.

NORTH DAKOTA PIPELINE AUTHORITY

The committee received multiple updates from the North Dakota Pipeline Authority on crude oil transportation and gas flaring. Flaring was addressed because if there were enough pipelines, there would be less flaring. The committee monitored the transportation of oil by rail and pipeline and natural gas by pipeline. The committee was informed of pipeline projects affecting oil and gas development in this state including the Enterprise pipeline from Stanley to Cushing, Oklahoma, and the Energy Transfer Partners pipeline from North Dakota to Patoka, Illinois.

Early in the interim, the committee received an estimate that 64 percent of the oil leaving the Williston Basin leaves by train and 28 percent is exported by pipeline. Within the Williston Basin, 64 percent is trucked and 36 percent is moved by pipeline. High prices on the East Coast make rail an economically sensible choice for the transport of oil out of the Bakken. Later in the interim, the committee was informed there had been a drop in rail usage and rise in pipeline usage because the spread between coastal markets and midcontinent markets narrowed. Although there had been an increase in the percentage of product being piped, because of the growth in oil production, there has not been a decrease in the number of trucks on the road. The committee was informed that transportation should not constrain movement of oil as long as there is the availability of rail transport.

NORTH DAKOTA TRANSMISSION AUTHORITY

The committee received information from the North Dakota Transmission Authority on transmission projects. The committee was informed that the Manitoba hydro study is moving forward to investigate the benefit of providing Canadian hydroelectric power to balance wind power in the Midwest Independent Transmission Systems Operator (MISO). If Manitoba hydroelectric power is brought in, it would displace two-thirds of the production of electricity from a coal plant. The hydroelectric power is to be built and is not in existence. The northern area study was conducted by MISO to identify the economic opportunity for transmission development in the area on a regional rather than local perspective.

COAL GASIFICATION REPORT

Great Plains Synfuels is the only commercial coal gasification facility producing synthetic natural gas. The plant produces carbon dioxide, which is transported to Canada for sequestration. The facility receives a tax credit. If there is a 20 percent reduction in carbon dioxide emissions, there is a 20 percent reduction in coal conversion taxes that go to the state, not counties.

The incentive is:

- $2.2 million for 2010;
- $2.5 million for 2011;
- $2.8 million for 2012;
- $2.6 million for 2013; and
- $1.78 million for January through June 2014.

The coal conversion taxes paid by the facility were $8.1 million in 2013.

GOVERNMENT FINANCE COMMITTEE

The Government Finance Committee was assigned the following responsibilities:

1. A study pursuant to Section 1 of 2013 Senate Bill No. 2125 regarding methods to assure that the legacy fund provides the lasting benefits intended by the voters in enacting the constitutional measure.
2. A study pursuant to Section 16 of 2013 House Bill No. 1452 regarding the feasibility and desirability of existing and possible state retirement plans, including an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan.
3. A study pursuant to Section 40 of 2013 House Bill No. 1015 regarding the foundation aid stabilization fund, including anticipated growth in the fund, appropriate funding levels, options for the disposition of excess funding if appropriate funding levels are exceeded, the reallocation of oil extraction taxes currently being deposited in the fund, and the feasibility and desirability of proposing changes to the constitution relating to the foundation aid stabilization fund.
4. A study pursuant to Section 38 of 2013 House Bill No. 1015 regarding the process of appropriating funds for salaries and wages and the state's classification system, including the feasibility and desirability of appropriating a lump sum amount to each agency for salaries and wages, without identifying specific purposes for the funding and allowing the agency head the flexibility to use the funding as necessary to accomplish the duties and responsibilities of the agency, and the effect of this change on the state's classification and benefits system and on the process of reporting by the agency on its use of the funds to the Legislative Assembly.
5. A study pursuant to Section 39 of 2013 House Bill No. 1015 regarding the feasibility and desirability of establishing a maximum state contribution to the cost of state employee health insurance premiums.

In addition, the Chairman of the Legislative Management also assigned the committee the following duties:

1. Review the State Board of Higher Education's activities relating to any agreement or financing associated with the purchase of the Research Enterprise and Commercialization building from the University of North Dakota Research Foundation on the campus of the University of North Dakota.
2. Review state budget information, including monitoring the status of revenues and appropriations.

Committee members were Representatives Jeff Delzer (Chairman), Larry Bellew, Joshua A. Boschee, Bette Grande, Craig Headland, Rick Holman, Lisa Meier, Kylie Oversen, Don Vigesaa, and Clark Williams and Senators Dwight Cook, Gary A. Lee, Donald Schaible, Ronald Sorvaag, Terry M. Wanzek, and Rich Wardner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

STUDY OF THE LEGACY FUND

Pursuant to Section 1 of 2013 Senate Bill No. 2124, the Government Finance Committee was assigned a study of the legacy fund. The study was to review methods to assure the legacy fund provides the lasting benefits intended by the voters enacting the constitutional measure that created the fund.

Fund History

The legacy fund was created in 2010 when the voters of North Dakota approved a constitutional amendment--now Article X, Section 26, of the Constitution of North Dakota--to provide that 30 percent of oil and gas gross production and oil extraction taxes on oil and gas produced after June 30, 2011, be transferred to the legacy fund. The principal and earnings of the legacy fund may not be spent until after June 30, 2017, and any expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the Legislative Assembly. Not more than 15 percent of the principal of the legacy fund may be spent during a biennium. The Legislative Assembly may transfer funds from any source to the legacy fund and such transfers become part of the principal of the fund.

The State Investment Board is responsible for investment of the principal of the legacy fund. Interest earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium. Section 21-10-11 creates a legacy and budget stabilization fund board to develop recommendations to the State Investment Board for the investment of funds in the legacy fund and the budget stabilization fund. The board consists of two members of the Senate appointed by the Senate majority leader, two members of the House of Representatives appointed by the House majority leader, the Director of OMB or designee, the President of the Bank of North Dakota or designee, and

the Tax Commissioner or designee. The section provides the goal of investment for the legacy fund is principal preservation while maximizing total return.

Section 15-08.1-08, created by the 2011 Legislative Assembly in House Bill No. 1451, establishes the strategic investment and improvements fund. The fund is intended to provide funding for one-time expenditures relating to improving state infrastructure or for initiatives to improve the efficiency and effectiveness of state government. The section provides if the balance of the strategic investment and improvements fund exceeds $300 million at the end of any month, 25 percent of any revenues received for deposit in the strategic investment and improvements fund must instead be deposited in the legacy fund.

Status of the Legacy Fund

The following is the status of the legacy fund for the 2011-13 and 2013-15 bienniums as of June 2014:

	2011-13 Biennium Actual		2013-15 Biennium Estimated	
Beginning balance		$0		$1,280,714,486
Add estimated revenues				
30 percent of oil and gas gross production and extraction tax collections	$1,132,412,536[1]		$1,785,986,831[2]	
Transfer of oil and gas tax revenues from the strategic investment and improvements fund	138,644,808[3]		251,596,164[3]	
Transfer of other revenue sources from the strategic investment and improvements fund	7,356,917[4]		22,793,114[4]	
Investment earnings	2,300,225[5]		66,016,026[6]	
Total estimated revenues		1,280,714,486		2,126,392,135
Total available		$1,280,714,486		$3,407,106,621
Total estimated expenditures and transfers		0[7]		0[7]
Estimated ending balance		$1,280,714,486		$3,407,106,621[8]

[1]This amount does not reflect any transfers from the strategic investment and improvements fund.

[2]Estimated revenues - The amount shown reflects actual oil and gas gross production tax and oil extraction tax revenue allocations through March 2014 with an updated projection for the remainder of the biennium. The updated projection is based on average daily oil production of 950,000 barrels of oil per day and a price of $85 per barrel of oil for the remainder of the biennium. The total estimated oil and gas tax collections are approximately $5.95 billion for the 2013-15 biennium, excluding an estimated allocation of approximately $450 million to the Three Affiliated Tribes. This amount does not reflect any transfers from the strategic investment and improvements fund.

[3]Pursuant to Section 15-08.1-08, if the unobligated balance of the strategic investment and improvements fund exceeds $300 million at the end of any month, 25 percent of any revenues received for deposit in the strategic investment and improvements fund in the subsequent month must be deposited instead into the legacy fund. This amount does not reflect additional transfers from the strategic investment and improvements fund from revenue sources other than oil and gas tax revenue.

[4]This amount reflects transfers to the legacy fund from the strategic investment and improvements fund from revenue sources other than oil and gas tax revenue, pursuant to Section 15-08.1-08.

[5]This amount reflects actual investment earnings for fiscal year 2012.

[6]This amount reflects actual investment earnings for fiscal year 2013 and estimated investment earnings for fiscal year 2014.

[7]The principal and earnings of the legacy fund may not be spent until after June 30, 2017.

[8]The OMB August 2014 revised revenue forecast projects a legacy fund balance of $3,823,919,403 on June 30, 2015.

Appropriations from the Legacy Fund

The committee learned the Legislative Assembly may make appropriations from the legacy fund prior to June 30, 2017, but the funds may not be disbursed or expended until after that date. Earnings from the legacy fund are required to be transferred to the general fund at the end of each biennium, but the Legislative Assembly may appropriate the funds directly from the legacy fund before any transfer is made to the general fund. The only limitation on appropriating and expending money from the legacy fund is the principal and earnings of the fund cannot be expended until after June 30, 2017, a two-thirds vote of the members elected to each house of the Legislative Assembly is required for an expenditure of principal of the fund, and not more than 15 percent of the principal of the fund may be expended during a biennium.

The Legislative Assembly during the 2013 regular legislative session enacted in statute a definition of earnings in respect to the legacy fund. The definition provides that unrealized gains or losses are not to be included in the determination of fund earnings. The fund earnings accruing after June 30, 2017, are to be transferred to the general fund at the end of each biennium. The first transfer from the legacy fund to the general fund will occur at the end of the

2017-19 biennium. The Legislative Assembly has the ability to appropriate the earnings of the legacy fund directly from the legacy fund prior to the earnings being transferred to the general fund.

Recommendation

The committee recommends House Bill No. 1033 to provide several definitions for constitutional provisions relating to the legacy fund and clarifies the process used to determine limitations on expenditures from the legacy fund. The bill also provides that earnings transferred from the legacy fund to the general fund at the end of a biennium are to be transferred back to the legacy fund and become principal unless certain criteria are met.

STUDY OF STATE EMPLOYEE RETIREMENT PLANS

Pursuant to Section 16 of 2013 House Bill No. 1452 the Government Finance Committee was assigned a study of existing and potential state employee retirement plans, including an analysis of defined benefit and defined contribution plans and the feasibility, desirability, and consequences of transitioning to only a state defined contribution plan.

Background Information

The Public Employees Retirement System (PERS) is governed by North Dakota Century Code 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. A county, city, or school district may choose to participate on completion of an employee referendum and on execution of an agreement with the board.

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 Highway Patrolmen's retirement plan had 145 active members and the Job Service retirement plan had 19 active members.

Main System Defined Benefit Plan

The PERS main system defined benefit plan is funded from employer contributions, employee contributions, and investment earnings. Contributions are calculated based on a percentage of gross pay. From 1977 through 1989, the employer contribution was 5.12 percent and the employee contribution was 4 percent. In lieu of state employee salary increases in 1983 and 1984, the state began to pay the 4 percent employee contribution. In 1989 the employer contribution was reduced by 1 percent and reallocated for a retiree health benefit credit.

The following is a summary of employer and employee contributions to the retirement plan since 1989:

1989 Through December 31, 2011		Effective January 1, 2012		Effective January 1, 2013		Effective January 1, 2014	
Employer	Employee	Employer	Employee	Employer	Employee	Employer	Employee
4.12%	4.00%[1]	5.12%	5.00%[1]	6.12%	6.00%[1]	7.12%	7.00%[1]

[1]The state pays 4 percent of the employee share of retirement contributions.

Benefit Levels and Recent Changes in Benefit Calculations

Members of the main public employees retirement plan are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 85 (commonly known as the "Rule of 85"). Retirement benefits under the defined benefit plan are calculated using the following mathematical formula provided in Section 54-52-17(4):

Final average salary[1] x benefit multiplier (2%)[2] x years of service credit[3] = monthly single life retirement benefit

[1]For employees who retired prior to August 1, 2010, the final average salary was the average of an employee's highest salaries in 36 of the last 120 months worked. For members who terminate employment on or after August 1, 2010, it is the average of the employee's highest salaries in 36 of the last 180 months worked.

[2]The benefit multiplier is the rate at which benefits are earned. The current benefit multiplier is 2 percent.

[3]The service credit is the amount of public service an employee has accumulated under PERS for retirement purposes.

The following is a summary of benefit changes approved by the Legislative Assembly since 1977:

Year	Benefit Multiplier	Change in Retirement Rule Levels
July 1977	1.04%	
July 1983	1.20%	
July 1985	1.30%	Rule of 90 established as an alternative for retirement eligibility
July 1987	1.50%	
July 1989	1.65%	
July 1991	1.69%	
August 1993	1.725%	Rule of 90 changed to Rule of 88
January 1994	1.74%	
August 1997	1.77%	Rule of 88 changed to Rule of 85
August 1999	1.89%	
August 2001	2.00%	

Similar adjustments were also made to the benefit calculations of members who retired prior to the above changes being made. Benefits were increased in amounts that equaled the benefit multiplier changes. In addition, retirees received a 13th check in 2006 and 2008. In 2006 the 13th check was equal to half of the retiree's normal monthly check and in 2008 the 13th check was equal to three-fourths of the retiree's normal monthly check.

Actuarial Funded Ratio

The actuarial funded ratio is the percentage of the retirement fund's actuarial value of assets to its actuarial accrued liabilities. The actuarial value of assets is determined by spreading market appreciation or depreciation over five years. This procedure results in recognition of all changes in market value over a five-year period resulting in less volatility in the funded ratio of the plan.

Below is a summary of the actuarial funded ratio of the PERS plan since 1990.

Year	Actuarial Funded Ratio
1990	101%
1991	101%
1992	101%
1993	100%
1994	99%
1995	103%
1996	104%
1997	109%
1998	111%
1999	109%
2000	115%
2001	111%
2002	104%
2003	98%
2004	94%
2005	91%
2006	89%
2007	93%
2008	92%
2009	85%
2010	73%
2011	70%
2012	65%
2013	62%

Defined Contribution Plan

The Legislative Assembly authorized the use of an optional defined contribution retirement plan effective January 1, 2000. Chapter 54-52.6 provides the plan is available to state employees who are in positions not classified by Human Resource Management Services, excluding employees of the judicial branch and employees under the control of the State Board of Higher Education. Additionally, between October 1, 2014, and July 31, 2017, any new state employee may elect to participate in the plan. An eligible employee may make an election at any time during the first six months of employment to participate in the defined contribution plan rather than the defined benefit plan. An election to participate in the defined contribution plan is irrevocable. A plan participant will remain in the defined contribution plan if the employee discontinues service in an unclassified position and becomes reemployed in a classified position.

The following is a summary of contribution levels for the defined contribution retirement plan:

Prior to December 31, 2011		Effective January 1, 2012		Effective January 1, 2013		Effective January 1, 2014	
Employer	Employee	Employer	Employee	Employer	Employee	Employer	Employee
4.12%	4.00%[1]	5.12%	5.00%[1]	6.12%	6.00%[1]	7.12%	7.00%[1]

[1]The state pays 4 percent of the employee share of retirement contributions.

Individual accounts are designated for each participant, and retirement benefits are based on the employer and employee contributions to the accounts plan and investment earnings on funds in the account. As of June 2013, there were 218 active members enrolled in the defined contribution retirement plan.

Previous State Employee Retirement Plans

North Dakota Old Age and Survivor Insurance (1947)

Prior to 1950 under federal law, state employees were ineligible to participate in the federal Social Security program. As a result, in 1947 the Legislative Assembly approved House Bill No. 182 creating the North Dakota Old Age and Survivor Insurance System (OASIS) plan, which became effective on July 1, 1947. Section 52-09-02 of the *North Dakota Old Age and Survivor Insurance System Law of 1949* stated the purpose of the system was "to promote economy and efficiency in the public service by providing an orderly means whereby employees who become superannuated may, without hardship or prejudice be replaced by more capable employees, . . .improve public employment . . . , reduce excessive personnel turnover and offer suitable attraction to high grade men and women to enter public service in the state."

The OASIS plan was a contributory retirement plan for state, county, and other political subdivision employees. The plan excluded certain groups, including policemen, firemen, and teachers in public schools and colleges. The eligibility requirements for participants were similar to Social Security and included:

- A retirement age of 65.
- At least 40 quarters of employment with credible earnings in 6 of the last 12 quarters.
- Contribution rates to the plan beginning in 1947 were 1 percent of the first $3,000 of an employee's annual salary provided by the employee and 1 percent of the first $3,000 of an employee's annual salary provided by the employer. By 1955 the contribution rates had increased to 1.5 percent of the first $4,800 of an employee's annual salary provided by the employee and 1.5 percent of the first $4,800 of an employee's annual salary provided by the employer. The contribution rates for employees and employers were increased to 2 percent each on the employee's first $4,800 of an employee's annual salary for 1956 and 1957.

Retirement benefits were based on a percentage of an employee's average monthly wages and years of service.

An analysis of the OASIS plan prepared in 1956 by the Bureau of Business and Economic Research at the University of North Dakota for the Legislative Research Council concluded the plan had not accomplished its objectives and it could not be expected to do so. The basic features of the plan were not consistent with the objectives, and the plan should be changed. Furthermore, the report recommended the change should be structured to allow employees to participate in Social Security.

In 1950 Title II of the Social Security Act was amended by the addition of Section 218 to permit the extension of coverage to employees of the state but was limited to states with no existing retirement program, which voided the applicability for the state of North Dakota because of the OASIS plan. This exclusion was amended by the federal government in 1954 to allow a state-federal agreement where state employees could now become covered by Social Security, with or without a state retirement plan, when certain conditions were met. These conditions included:

- The state must authorize coverage.
- Existing employees covered by an existing retirement plan must elect, through a referendum, to be included in Social Security.
- The state must pay retroactive contributions to Social Security for each quarter of coverage earned by present employees after the effective date of the agreement and to the date on which the agreement was made.

In 1955 the Legislative Assembly passed House Bill No. 736, which enabled the state to make an agreement with the federal government. On December 20, 1956, Governor C. Norman Brunsdale called a referendum for all covered employees and allowed employees to choose coverage under Social Security rather than the OASIS plan.

The adoption of Social Security was intended as a benefit to both the state of North Dakota and its employees. The employees already receiving retirement benefits under the OASIS plan were allowed to continue in the OASIS plan.

Additionally, any state employee that would have benefited more under the OASIS plan than Social Security was allowed to elect continuation in the OASIS plan.

By 1957, the state concluded the OASIS plan was not actuarially sound and could not function as a self-supporting plan. The accrued liabilities ($40,830,172) of the fund were in excess of the assets ($15,282,808), and the rate at which liabilities were accruing was far greater than the rate at which assets were accruing. To reverse this would have required changes not consistent with the objectives the OASIS plan was designed to promote. If the objectives of the plan to permit early retirement and reduce excessive turnover were accomplished, then the accomplishment would have rendered the plan insolvent.

In 1957 the Legislative Assembly approved Senate Bill No. 45, which closed the OASIS plan on July 1, 1957. The majority of employees had transitioned to Social Security as authorized by 1955 House Bill No. 736. Contributions necessary to fund the remaining participants in the OASIS plan were provided from an employer contribution of 4 percent of the first $4,800 of annual wages. The employer contribution percentage was changed by the Legislative Assembly during the period from 1957 to 1966. From 1966 to 1989, provisions were in place that triggered the employer contributions on and off depending on the funding needs of the OASIS fund. The schedule below presents the contribution percentages.

Period	Employer Contribution Rate[1]
1957 to 1959	4%
1959 to 1961	3.5%
1961 to 1963	3%
1963 to 1966	2%
1966 to 1989	1% - Only as necessary

[1]Employer contributions were calculated on the first $4,800 of annual wages for each employee.

In 1989 the Legislative Assembly approved House Bill No. 1118, which discontinued the employer contribution after June 30, 1989. In 1999 the Legislative Assembly approved House Bill No. 1170, which repealed the employer contribution section. Any future funding requirements for the OASIS plan, for which the OASIS fund was not sufficient to pay, would be provided with appropriations through the general fund. The Legislative Assembly provided a $19,000 general fund appropriation in each of the 2005-07 and 2007-09 bienniums for paying remaining benefits under the OASIS plan.

Money Purchase Plan (1965)

In the early to mid-1960s, North Dakota was one of only a few states remaining that did not offer a state retirement plan to its employees. There was no other retirement plan provided for state employees after the OASIS plan was closed, and most employees transitioned to Social Security in 1956 and 1957. In 1965 the Legislative Assembly approved Senate Bill No. 164 creating the employees' retirement program, which became effective on July 1, 1966, structured as a money purchase plan (similar to a defined contribution plan). This plan only applied to state employees in 1966 but was amended in 1969 to include employees of counties, cities, and noncertified employees of school districts.

In 1966 the employer and employee contributions were fixed at 4 percent of salary with the employer's contributions being assessed only on the first $7,500 of annual wages. In 1969 contributions were assessed on the first $12,500 of each employee's annual wages, and in 1975 the amount increased to the first $15,000 of annual wages.

Contributions were fixed with the new money purchase plan, but the benefits varied. Each employee's monthly lifetime benefit payments were determined by the value of the employee's fund at the time of retirement.

The 1975-76 interim State and Federal Government Committee studied the feasibility of adopting a benefit formula retirement plan for state employees. The committee determined fluctuations in the market did not provide a reliable way for employees to determine their retirement benefits, which resulted in more risk and uncertainty to the employee. Based on an actuarial study conducted by Martin E. Segal Company, Inc., and other considerations, the committee recommended 1977 Senate Bill No. 2068 to change the Public Employees Retirement System from a money purchase plan to a benefit formula-type plan.

Benefit Formula Plan (1977)

In 1977 the Legislative Assembly approved Senate Bill No. 2068 creating the benefit formula retirement plan (a defined benefit plan), which became effective on July 1, 1977, and all members of the money purchase plan were covered under the new plan. This plan allowed members to receive credit for years of service prior to July 1, 1966--the effective date of the money purchase plan. As with the money purchase plan, the benefit formula plan required a

4 percent of salary benefit contribution for employees and a 5.12 percent of employee's salary benefit contribution for employers (with no employer maximum limit).

This new plan allowed employees to contribute a fixed percentage of their salary and receive a fixed benefit upon retirement. Testimony supporting the new plan indicated it was to provide increased benefits for long-term employees and give employees more security in retirement.

Types of Retirement Plans Used in Other States

The committee received information regarding state employee retirement plans in other states. The committee learned all states offer some form of retirement plan to state employees. Most plans fall into one of the following three categories:

- Defined benefit plans - Provide a lifelong annuity upon retirement that is based on factors such as final average salary, length of service, and benefit multipliers.
- Defined contribution plans - Provide individual employee retirement accounts which normally consist of employee contributions, employer contributions, and investment earnings. Final retirement benefits are based on total contributions and investment earnings or losses.
- Hybrid plans - Combine elements of defined benefit plans and defined contribution plans. Some states offer a cash balance plan which uses individual accounts similar to a defined contribution plan except that a minimum level of investment return is guaranteed.

A National Conference of State Legislatures (NCSL) study in 2012 detailed the number of states and Washington, D.C., and Puerto Rico that offer each type of plan as follows:

- Thirty-two states and Puerto Rico have a defined benefit plan only for state employees.
- Two states and Washington, D.C., have a defined contribution plan only for state employees.
- Three states have a cash balance plan only for state employees.
- Thirteen states have either a hybrid retirement plan or allow employees the option of choosing which type of plan to participate in.

Other States Public Employee Retirement Plans

The committee reviewed a report prepared by the Wisconsin Legislative Council comparing major public employee retirement systems. The report provides details regarding 87 major retirement systems that cover state employees, teachers, and political subdivisions employees. Major findings in the report include:

- Participants in 17 of the 87 plans are not covered by Social Security. In plans where employees are not covered by Social Security, the benefit multiplier is generally higher than in plans where employees are also covered by Social Security. For plans in which employees are covered by Social Security, the benefit multiplier ranges from 1 to 2.5 percent. For plans in which employees are not covered by Social Security, the benefit multiplier ranges from 2 to 2.5 percent.
- Employee contribution rates increased in 22 plans from 2008 to 2010 and employer contribution rates increased in 47 plans between 2008 and 2010. However, 19 plans had employer contribution rates decrease between 2008 and 2010. Some of the employer contribution rates are based on actuarial valuations which cause rates to adjust automatically.
- The average funding ratio of all plans reviewed was 73.4 percent for fiscal year 2010.

Recent Changes to Other States' Retirement Plans

The committee learned several states have recently made changes to state employee retirement plans. The following is a summary of changes in selected states.

Montana

The Montana Legislature enacted changes in 2011 and 2013 affecting the Montana PERS. Major changes included:

- In 2013 the employee contribution rate for all participants was increased from 6.9 to 7.9 percent. The employer contribution rate was increased by 1 percent on July 1, 2013, and is being increased by 0.1 percent each year for 10 years beginning July 1, 2014.
- Benefit plan calculations for new hires after June 30, 2011, were adjusted.

- The annual cost-of-living adjustment (COLA) for all current and future retirees is set at 1.5 percent as long as the retirement system maintains a funding level of at least 90 percent. The COLA is reduced by 0.1 percent for each 2 percent the funding level is below 90 percent. If the amortization period of the unfunded liability is 40 years or greater, the COLA will be zero.
- A portion of natural resources taxes will be deposited in the PERS fund.

In October 2013, a group of retired Montana state employees filed a lawsuit challenging the changes made by the Montana Legislature to the COLAs. The retired employees are contending the changes violate a contract the employees had with the state relating to retirement benefits.

Tennessee

Pursuant to statutory changes in 2013, the Tennessee Consolidated Retirement System is creating a hybrid retirement plan for employees hired on or after July 1, 2014. The hybrid plan includes both a defined benefit and defined contribution component. The employee contribution will total 7 percent--5 percent is allocated to the defined benefit plan and 2 percent is allocated to the defined contribution plan. However, the employee may choose not to make the 2 percent contribution to the defined contribution plan. The total employer contribution is 9 percent--4 percent is allocated to the defined benefit plan and 5 percent is allocated to the employee's defined contribution account. The defined benefit multiplier is 1 percent under the new plan.

Kansas

In 2012 the Kansas Legislature enacted changes to the Kansas PERS. Effective January 1, 2015, new state employees (with some exceptions) will be placed in a new cash balance retirement plan tier. Employees will provide a contribution of 6 percent, and the state will provide a contribution based on years of service. The state contribution will range from 3 percent for employees with less than 5 years of service to 6 percent for employees with more than 24 years of service. The employee accounts receive interest credits of 5.25 percent per year and may receive additional interest credits of up to 4 percent if the investment rate of return is 10 percent or more for that fiscal year. However, the additional interest credits are limited based on the funding ratio of the entire PERS.

Rhode Island Retirement Security Act

The Rhode Island Retirement Security Act of 2011 became effective on July 1, 2012, and made several changes to the regular state employee retirement plan. The Act made changes to the retirement plans of both current workers and retirees in addition to new hires by changing from a defined benefit plan to a hybrid defined benefit and defined contribution plan and making other adjustments. Under the new hybrid plan, employees pay 3.75 percent to the defined benefit component of the plan and 5 percent to the defined contribution component of the plan.

The Act also provided other changes to the retirement plan. The Act suspended automatic COLAs if the retirement plan is less than 80 percent funded. Any COLA awarded is based on plan investment returns with a maximum adjustment of 4 percent. The Act also changed the vesting period from 10 years to 5 years, adjusted the benefit multiplier from a tiered system to 1 percent per year of service, and adjusted eligible retirement dates.

In June 2012, a lawsuit was filed against the state of Rhode Island by several entities representing retired state employees who claimed the Act breached a contract the employees had with the state. Both parties agreed to conduct mediation sessions.

Projected Costs to Close the Defined Benefit Plan to New State Employees

The committee received information regarding the actuarially calculated costs relating to the public employees defined benefit retirement plan if state employees hired after January 1, 2016, are required to participate in a defined contribution benefit plan.

The Segal Company Projections

The committee received information in March 2014 from The Segal Company (Segal) which is the consulting actuary for PERS. Segal reported that if the defined benefit plan was closed to new employees, the state portion of the plan would be able to pay benefits until the year 2046. There would be a projected contribution shortfall of $3,688,100,000 for future benefits to be paid after 2046. However, a payment of $162.8 million could be made to the retirement plan on July 1, 2015, to fully offset the state portion of the future projected contribution shortfall. The estimated payment of $162.8 million needed to fully fund the state portion of the plan is based on an 8 percent investment return. However, the committee learned the asset allocation of the plan's investments may need to be adjusted near the projected end of the plan, which to move to more short-term investments would potentially reduce the plan's investment return.

Independent Review by Arthur J. Gallagher & Co.

The committee requested and received approval from the Chairman of the Legislative Management to enter an actuarial consulting contract with Arthur J. Gallagher & Co. Representatives of Arthur J. Gallagher & Co. (Gallagher) reviewed the July 1, 2013, actuarial valuation of the PERS plan conducted by Segal and the March 2014 study conducted by Segal regarding estimated costs to close the main state employee defined benefit retirement plan.

Gallagher reviewed assumptions used by Segal and suggested the committee consider reviewing plan projections using alternative assumptions. Suggested alternative assumptions were provided for investment returns, salary increases, payroll growth, employee mortality, and employee retirement rates.

Gallagher reported minimal differences resulting from its review of Segal's July 2013 valuation report but did have differences compared to Segal's March 2014 study results. The following three significant findings were identified by Gallagher relating to the March 2014 study results:

	Gallagher Finding	Gallagher Comments
Finding 1 - Disclosure	• Segal made adjustments to the valuation outputs to reduce projected benefit payments from years 2014 through 2028 without disclosing in their report the reason for the change or the cost impact.	• Actuarial Standards of Practice (ASOP) No. 41 states that an actuarial report should "identify the methods, procedures, assumptions, and data used by the actuary with sufficient clarity that another actuary qualified in the same practice area could make an objective appraisal of the reasonableness of the actuary's work as presented in the actuarial report." • Segal's March 6, 2014, study states that "cost estimates are based on the July 1, 2013 actuarial valuation."
Finding 2 - Methodology	• Segal explained the reduction in projected benefit payments was due to "The current valuation assumptions (as approved by the Board of Trustees) appear to have higher rates of assumed retirement than are currently being observed." • Segal said no other adjustments were made. This implies: No larger benefit payments for deferred retirements. No adjustments for higher contributions due to fewer retirements.	• Gallagher results, as demonstrated on July 1, have shown that adjustments to retirement assumptions do not significantly impact present values (i.e., either the plan pays a retiree less for longer or more for a shorter period). • Segal's actuarial valuation shows no change to the contribution requirement in the prior year due to retirement experience.
Finding 3 - Omission	• Segal excluded from the study the impact of participants entering after July 1, 2013, and before the assumed closure date of January 1, 2016.	• The inclusion of participants during this period adds significant benefit payments to the plan. However, additional assumed member and employer contributions are nearly offsetting.

Gallagher indicated the findings create a difference between Segal's projections and Gallagher's projections. If only the state employees group was closed and separated from nonstate employees, the insolvency date of the plan would be in 30 years as determined by Gallagher compared as to 35 years as determined by Segal. The estimated one-time contribution on July 1, 2015, to fully fund the retirement plan would be $301 million as calculated by Gallagher compared to $162.8 million under Segal's projections.

Gallagher reported if the plan were closed to both state employees and nonstate employees the insolvency date of plan would be in 32 years as determined by Gallagher compared to 42 years as determined by Segal. The one-time contribution under this scenario would be $445 million as calculated by Gallagher compared to $99 million under Segal's projections.

Segal provided comments regarding differences in the projected actuarial costs calculated by Segal and by Gallagher to close the main state employee retirement plan to new employees effective January 1, 2016. Segal indicated the major difference in the calculations is due to an adjustment made by Segal to the amount of future benefit payments. The adjustment was inadvertently not reported by Segal to PERS or to Gallagher when disclosing projection assumptions.

Other Testimony Received

The committee received comments from other interested person. Major comments made include:

- Concern that making changes to the state employee retirement plan could affect the ability of the state to recruit and retain employees.

- Concern that state employees currently enrolled in the defined contribution retirement plan do not believe they will have adequate funds for retirement.

Recommendation

The committee recommends Senate Bill No. 2038 to provide for changes to the main state employee retirement plan. Under the bill, an eligible employee hired for the first time after December 31, 2015, will be required to enroll in the defined contribution plan under Chapter 54-52.6, rather than the defined benefit plan. The bill does not affect Supreme Court or district court judges, employees eligible to participate in the National Guard retirement plan or the law enforcement plan, employees of a political subdivision, or employees of the State Board of Higher Education and state institutions under the jurisdiction of the board that are participating in the TIAA-CREF retirement plan. State employees currently in the defined benefit plan and those hired before January 1, 2016, who elect to participate in the defined benefit plan will continue to participate in the defined benefit plan. However, during the last six months of 2016, a state employee participating in the defined benefit plan may make an irrevocable election to transfer to the defined contribution plan. The bill also changes the vesting period for employees participating in the defined contribution plan to allow for participants to fully vest in employer contributions after one year of service instead of four.

As discussed later in this report in the study of the foundation aid stabilization fund, the committee is recommending a separate bill to create a public employee retirement stabilization fund that may be used to address the unfunded liabilities of state employees participating in the main retirement plan.

STUDY OF THE FOUNDATION AID STABILIZATION FUND

Pursuant to Section 40 of 2013 House Bill No. 1015, the committee was assigned a study of the foundation aid stabilization fund including:

- Anticipated growth in the fund;
- Appropriate funding levels;
- Options for the disposition of excess funding if appropriate funding levels are exceeded;
- The reallocation of oil extraction taxes currently being deposited in the fund; and
- The feasibility and desirability of proposing changes to the constitution relating to the fund.

Fund History

The foundation aid stabilization fund was created in 1994 when the voters of North Dakota approved a constitutional amendment, now Article X, Section 24, of the Constitution of North Dakota, to provide that 20 percent of oil extraction tax revenue be allocated as follows:

- 50 percent (of the 20 percent) to the common schools trust fund.
- 50 percent (of the 20 percent) to the foundation aid stabilization fund.

The principal of the foundation aid stabilization fund may only be spent upon order of the Governor to offset foundation aid reductions made by executive action due to a revenue shortfall. Section 54-44.1-12 provides the Director of the Budget may order an allotment to control the rate of expenditures of state agencies. This section provides an allotment must be made by specific fund and all departments and agencies that receive money from a fund must be allotted on a uniform percentage basis, except that appropriations for foundation aid, transportation aid, and special education aid may only be allotted to the extent the allotment can be offset by transfers from the foundation aid stabilization fund. One budget allotment has occurred since the foundation aid stabilization fund was created in 1994. During the 2001-03 biennium, funding of $5,500,639 was transferred to the Department of Public Instruction to offset a reduction in state school aid and special education payments resulting from a 1.05 percent budget allotment ordered by Governor John Hoeven in July 2002.

Article X, Section 24, of the Constitution of North Dakota, provides the interest income of the foundation aid stabilization fund must be transferred to the general fund on July 1 of each year. However, the State Treasurer's office allocates the interest income to the general fund on a monthly basis.

Status of the Foundation Aid Stabilization Fund

The following is the status of the foundation aid stabilization fund for the 2011-13 and 2013-15 bienniums as of June 2014:

	2011-13 Biennium Actual		2013-15 Biennium Estimated	
Beginning balance		$140,193,764		$335,364,942
Add revenues				
Oil extraction tax allocations	$195,171,178		$327,804,364[1]	
Total revenues		195,171,178		327,804,364
Total available		$335,364,942		$663,169,306
Less expenditures and transfers				
Transfer to foundation aid program	$0[2]		$0[2]	
Total expenditures and transfers		0		0
Ending balance		$335,364,942		$663,169,306

[1]Estimated revenues - Based on actual oil extraction tax collections deposited in the fund through March 2014 and an updated projection for the remainder of the biennium. The updated projection is based on average daily oil production of 950,000 barrels of oil per day and a price of $85 per barrel of oil for the remainder of the biennium.

[2]Estimated expenditures - As provided in Article X, Section 24, of the Constitution of North Dakota, the principal of the foundation aid stabilization fund can only be used to offset foundation aid reductions made by executive action due to a revenue shortfall. No foundation aid reductions as a result of a revenue shortfall are currently anticipated in the 2013-15 biennium.

Potential Fund Balances Based on the August 2014 Revised Revenue Forecast

The schedule below provides updated projections for the 2013-15 and 2015-17 biennium estimated amounts available in the foundation aid stabilization fund based on the revised revenue forecast released by the Office of Management and Budget (OMB) in August 2014.

	2013-15 Biennium Revised Revenue Forecast	2015-17 Biennium Preliminary Revenue Forecast
Beginning balance	$335,364,942	$710,975,584
Add estimated oil extraction tax revenues	375,610,642[1]	517,915,350[2]
Total available - End of biennium	$710,975,584	$1,228,890,934

[1]The estimated revenues are based on OMB's revised revenue forecast, which anticipates average daily oil production increasing to 1.3 million barrels per day and a price of $90 per barrel for the remainder of the 2013-15 biennium.

[2]The estimated revenues are based on OMB's preliminary 2015-17 biennium revenue forecast, which anticipates average daily oil production increasing from 1.3 million barrels per day to 1.4 million barrels per day during the 2015-17 biennium and a price of $90 per barrel for the 2015-17 biennium.

Historical Fund Balances Compared to Total Foundation Aid or State Aid to Schools

The committee reviewed the following schedule which compares the foundation aid stabilization fund balance at the end of each biennium since 1999 to the total funding for foundation aid or state aid to schools appropriated each biennium.

	Foundation Aid Stabilization Fund Balance at the End of the Biennium	Total Foundation Aid or State Aid to Schools Appropriated for the Biennium[1]	Foundation Aid Stabilization Fund Balance at the End of the Biennium as a Percentage of the Total Foundation or State Aid Appropriated for the Biennium
1999-2001	$10,517,143	$585,734,476	1.80%
2001-03	$8,991,303	$628,345,368	1.43%
2003-05	$16,098,385	$665,628,056	2.42%
2005-07	$29,009,838	$698,565,879	4.15%
2007-09	$65,750,547	$780,765,879	8.42%
2009-11	$140,193,764	$1,274,254,480[2]	11.00%
2011-13	$335,364,942	$1,350,992,316[3]	24.82%
2013-15 estimated	$663,364,942	$1,835,700,000[4]	36.14%

[1]Total foundation aid appropriated from the general fund and state tuition fund.

[2]The Legislative Assembly provided, as part of state school aid, $295 million from the general fund for mill levy reduction grants to school districts. In addition to funding from the general fund and the state tuition fund, the 2009 Legislative Assembly provided, as state school aid, $85.6 million from federal funds available through the American Recovery and Reinvestment Act of 2009.

[3]The Legislative Assembly provided, as part of state school aid, $341.8 million from the general fund for mill levy reduction grants to school districts and $5 million from the oil and gas impact grant fund for rapid enrollment growth grants.

[4]The Legislative Assembly provided integrated formula payments totaling $1.75 billion that includes $656.5 million for the property tax relief component. The Legislative Assembly also provided $13.6 million for rapid enrollment growth grants.

Use of Budget Stabilization Fund for State School Aid Payments

The budget stabilization fund was established in 1987 and contains funds that may be used to offset a general fund revenue shortfall. Any amount in the state general fund in excess of $65 million at the end of the biennium must be transferred to the budget stabilization fund. However, the maximum balance of the fund is limited to 9.5 percent of the general fund budget as approved by the most recently adjourned Legislative Assembly. Based on general fund appropriations made during the 2013 regular legislative session, the maximum fund balance is currently $583.5 million.

The Governor may order a transfer from the budget stabilization fund to the general fund if the Director of OMB projects general fund revenues for the biennium will be at least 2.5 percent less than estimated by the most recently adjourned Legislative Assembly. The amount transferred is limited to the difference between an amount 2.5 percent less than the original legislative general fund revenue forecast and the revised forecast prepared by OMB.

In the event the Governor orders a budget allotment, funding from the foundation aid stabilization fund is to be used to offset the budget allotment for foundation aid, transportation aid, and special education aid payments to schools. If the projected revenue shortfall is 2.5 percent or less, the foundation aid stabilization fund would be used to offset the entire allotment. If the projected revenue shortfall is 2.5 percent or greater, it appears that any allotment of school aid payments in excess of 2.5 percent may be offset by either a transfer from the foundation aid stabilization fund or the budget stabilization fund. The determination of which funding source to use for allotments in excess of 2.5 percent would be made by the Governor, who has the authority to order transfers from either fund subject to constitutional and statutory provisions.

The committee reviewed the following schedule which details how much funding would be used from the foundation aid stabilization fund and budget stabilization fund to offset a revenue shortfall based on the budget stabilization fund being used to replace state school aid payments funding due to a general fund revenue shortfall:

Use of Foundation Aid Stabilization Fund and Budget Stabilization Fund to Offset Allotments - Based on Using the Budget Stabilization Fund for State School Aid Payments

Allotment/Revenue Shortfall Amount	State School Aid Payments - General Fund	Other General Fund Appropriations	Total
First 2.5 percent - Foundation aid stabilization fund	$42,384,350	$0	$42,384,350
From 2.5 to 11 percent - Budget stabilization fund[1]	$144,162,591	$439,383,208	$583,545,799
From 11 to 47.6 percent - Foundation aid stabilization fund	$620,980,592	$0	$620,980,592

[1]The Legislative Assembly in 2013 House Bill No. 1015 provided $720 million of general fund appropriations be excluded from the calculation used to determine the maximum balance of the budget stabilization fund. Therefore, the current fund balance of the budget stabilization fund is equal to approximately 8.5 percent of total general fund appropriations for the 2013-15 biennium.

Options for a Minimum Fund Balance

The committee received information regarding options to provide for a minimum foundation aid stabilization fund balance and to allow excess funds to be used for other purposes. The committee reviewed the following schedule detailing minimum fund balances that would be required for the foundation aid stabilization fund based on a minimum fund balance equal to selected percentages of general fund appropriations for state school aid payments:

Percentage of 2013-15 Biennium General Fund Appropriations for State School Aid Payments	Minimum Fund Balance
5 percent	$84,768,700
10 percent	$169,537,400
15 percent	$254,306,100
20 percent	$339,074,800
25 percent	$423,843,500

The committee learned if the minimum foundation aid stabilization fund balance was equal to 15 percent of state school aid payments for the 2013-15 biennium, the estimated balances of the budget stabilization fund and foundation aid stabilization fund would provide enough funding for state school aid payments to offset a general fund revenue shortfall of approximately 25 percent.

Recommendation

The committee recommends the following:

1. House Bill No. 1034 clarifying the use of the foundation aid stabilization fund and budget stabilization fund for state school aid payments in the event of a general fund revenue shortfall. The bill provides that the funds be used in the following order relating to state school aid payments:

- The foundation aid stabilization fund is to be used to offset the first 2.5 percent of a general fund allotment.
- The budget stabilization fund is to be used to offset any general fund revenue shortfall in excess of 2.5 percent.
- After the budget stabilization fund is depleted, any remaining general fund allotment may be offset with funds from the foundation aid stabilization fund.

2. Senate Concurrent Resolution No. 4003 to amend Article X, Section 24, of the Constitution of North Dakota. The provisions of the resolution would permit the Legislative Assembly to appropriate or transfer any principal balance in the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium for the purpose of:
   - Making low-interest loans for school construction projects;
   - Addressing existing or anticipated unfunded benefit obligations of state retirement funds; or
   - Other education-related purposes.

3. Senate Bill No. 2039 to establish a school construction assistance loan fund and a public employee retirement stabilization fund. The school construction assistance loan fund would only be available to be used for low-interest school loans as designated by the Legislative Assembly. The funds in the public employee retirement stabilization fund would be available to offset any unfunded liability of state employees participating in the main retirement plan. The State Investment Board would be responsible for investing moneys in the public employee retirement stabilization fund. The bill includes a contingency that would make the transfers into these funds from the foundation aid stabilization fund effective only upon approval of the resolution by the Legislative Assembly in 2015 and by the voters in June 2016. The bill provides for a transfer of $250 million into the school construction assistance loan fund and a transfer of $200 million into the public employee retirement stabilization fund.

STUDY OF THE PROCESS OF APPROPRIATING STATE AGENCY SALARIES AND WAGES

The committee was assigned a study of the process of appropriating state agency salaries and wages pursuant to Section 38 of 2013 House Bill No. 1015. The study was to include a review of the feasibility and desirability of appropriating a lump sum amount to each agency for salaries and wages, without identifying specific purposes for the funding and allowing the agency head the flexibility to use the funding as necessary to accomplish the duties and responsibilities of the agency, and the effect of this change on the state's classification and benefits system and on the process of reporting by the agency on its use of the funds to the Legislative Assembly.

Current Budget Process for Salaries and Wages

State Agency Budget Requests

The budgeting process for state employee salaries and wages begins during the spring and summer of even-numbered years. State agencies submit their budget requests to OMB. The budget requests include a specific number of full-time equivalent (FTE) positions and the projected salaries of existing employees on July 1 of the following year. The requests may include additions or deletions of FTE positions and related funding changes. The requests are reviewed and adjusted for inclusion in the executive budget recommendation. When the executive budget recommendation is prepared, funding is added to agency budgets for recommended salary and fringe benefit increases. The executive budget may also recommend the addition or deletion of agency FTE positions and related funding.

Appropriation Bills and Line Items

The executive budget recommendation is presented to the Legislative Assembly through the introduction of appropriation bills. The appropriation bills contain line items that provide funding for specific purposes including salaries and wages. The appropriation bills also contain the number of FTE positions an agency is authorized. Most agency appropriation bills include a salaries and wages line item that provides funding for salaries and fringe benefits such as health insurance premiums, retirement contributions, social security taxes, workers' compensation premiums, and unemployment taxes. Funding may also be included in the salaries and wages line item for temporary employee salaries and overtime. Certain agency appropriation bills have line items that are program-based and provide all funding for a program including salaries and benefits, operating expenses, and capital expenses. An example of a program-based appropriation bill is the Department of Corrections and Rehabilitation bill which has line items for adult services and youth services.

After the appropriation bills are introduced, the Legislative Assembly reviews the bills and makes adjustments as desired. Adjustments may be made to the level of salary increases, the number of FTE positions authorized, and any other funding item. Once approved by both chambers of the Legislative Assembly, each bill is delivered to the

Governor for signature and becomes effective July 1 following the legislative session unless the bill includes an emergency clause which may provide that certain items or the entire bill becomes effective earlier.

When an agency's appropriation bill becomes effective, the state agency is allowed to expend funds as provided in each line item of the bill for purposes designated by the line item. An agency may also adjust the number of FTE employees under its control up to the number authorized in the bill. An agency may request approval from the Emergency Commission to transfer funds between line items. An agency may also request approval from the Emergency Commission to expend additional federal or other funds received by the agency. Budget Section approval is required for any line item transfer exceeding $50,000 or for an agency to accept federal or other funds in excess of $50,000. Upon recommendation of the Emergency Commission and approval of the Budget Section, an agency may also add FTE positions. However, the approval to add FTE positions is only effective for the remainder of the biennium during which the positions were approved.

Salaries and Wages Appropriations for North Dakota University System Institutions

The appropriations for the North Dakota University System institutions are made in a block grant format. All funding for the operations of an institution, including salaries and benefits, operating expenses, utilities, and other expenses, are appropriated in an operations line item. Each institution has the flexibility to use the operations funding as desired. The State Board of Higher Education also has the authority to adjust the number of authorized FTE positions at each institution as needed subject to the availability of funds.

State Employee Classification System

The Central Personnel System Act was approved by the 1975 Legislative Assembly. The Act created the Central Personnel Division of OMB and the State Personnel Board, which are provided for in Chapter 54-44.3. The purpose of the Central Personnel Division is to establish a unified personnel administration system for classified employees of the state. The purpose of the State Personnel Board is to oversee the development and administration of the classification system. The Central Personnel Division was changed to North Dakota Human Resource Management Services in August 2003 pursuant to 2003 Senate Bill No. 2092.

The Human Resource Management Services Division of OMB has authority to adopt policies, rules, and procedures regarding classification and compensation plans, salary administration, personnel administration actions, and compliance with state or federal law or rule pertaining to merit personnel systems.

The Human Resource Management Services uses a class evaluation system to determine a grade for each classified position. A salary range is assigned for each grade based on a market policy point which is determined based on Job Service North Dakota data, regional state government data, Hay Group compensation database information, and information from a custom survey of 103 benchmark job classes to a broad range of North Dakota employers.

Section 54-44.3-20 provides that all positions within the state are included in the classification system except for positions specifically excluded, including elected officials, employees of the legislative and judicial branches, employees under the control of the State Board of Higher Education, and others.

As of December 2012, state agencies employed 7,167 classified employees with an average employee age of 46.4 years, average years of service of 13.1, and an average annual salary of $48,554. As of December 2012, there were a total of 770 unclassified employees excluding employees of the University System.

Process of Appropriating Salaries and Wages in Other States

Minnesota

Prior to 1993, Minnesota appropriated funding for state employee salaries and wages based on FTE positions similar to the North Dakota process. In 1993 the Minnesota Legislature changed from this process to a lump sum appropriation process. Under the lump sum appropriation process, the Minnesota Legislature discontinued its reference to FTE positions and specific appropriation line items and began appropriating funds by agency or program in total. The intent of the legislature in making this change was to focus more decisionmaking on agency and program performance and outcomes rather than the specific costs of operating the agency or program. According to representatives of the Minnesota Legislature, the focus on performance and outcomes has not occurred as intended when the change was made in 1993.

In Minnesota, rather than having one appropriations committee in each chamber like North Dakota, the 10 to 12 standing committees in each chamber appropriate funds for state agency operations. For example, the higher education standing committee appropriates funding for higher education and the human services committee appropriates funding for human services programs. Each committee may take a different approach regarding the extent to which budget detail is considered as part of developing each agency's budget.

The starting point for determining an agency's funding level for the following budget year is the previous year's appropriation approved by the legislature. The Governor makes budget recommendations that include reference to the number of FTE positions for each agency or program. The Governor includes those recommendations in appropriation bills introduced to the legislature. The committee developing the budget for the agency may choose to use the bill containing the Governor's recommendations or prepare its own bill. The legislature does not include funds in agency budgets specifically for salary increases or health insurance increases. Those items would need to be provided by the agency within the funding approved by the legislature, usually based on an overall percentage increase for the agency or program. Again, the level of detail varies by the committee assigned to develop the agency's budget.

Montana

Montana uses a process similar to North Dakota's for appropriating funds for salaries and wages, including basing the appropriations on FTE positions. Montana does, however, reduce permanent employees' salaries and wages funding by 4 percent for all agencies having more than 20 FTE employees for anticipated savings from vacant positions and employee turnover.

South Dakota

South Dakota uses a process similar to North Dakota's for appropriating funds for salaries and wages, including basing the appropriations on FTE positions. The Governor, in preparing the executive budget recommendation, includes funding for the anticipated salaries and wages, salary increases, health insurance premiums, and other fringe benefits for the authorized number of FTE positions for each agency. Some years, rather than appropriating funds to each agency for salary increases, the funding will be appropriated as a funding pool in the Bureau of Finance and Administration to be allocated to each agency during the fiscal year. The South Dakota Legislature, as part of its review of agency budgets during the session, receives information on each agency's actual salaries and wages expenditures during the previous fiscal year compared to the amount appropriated. The legislature may choose to reduce funding for salaries and wages if the actual expenditures were substantially less than the amounts appropriated.

Iowa

Iowa uses a process similar to North Dakota's for appropriating funds for salaries and wages, including basing the appropriations on FTE positions. However, Iowa does not include funding for salary increases for state employees in each executive branch agency's appropriation. Instead, it appropriates a lump sum amount to the Iowa Department of Management, which is responsible for allocating an appropriate amount to each agency for providing salary increases for state employees in the agency.

New Mexico

Prior to 2014, New Mexico was using a process similar to North Dakota's for appropriating funds for salaries and wages. The funding was based on the number of authorized FTE positions. During its 2014 legislative session, the New Mexico legislature changed its process and discontinued basing salaries and wages funding on the number of FTE positions for all state agencies. This change resulted from legislative concerns with state agencies being authorized FTE positions but not filling the positions, which resulted in the legislature appropriating more funding than necessary for salaries and wages. Because this change was just implemented, the specifics of how future appropriations for salaries and wages has not yet been determined but will likely be based on actual salaries and wages spending of the agency for the current fiscal year and adjusted as necessary for the budget year under consideration.

Nevada

Nevada uses a process similar to North Dakota's for appropriating funds for salaries and wages, including basing the appropriations on FTE positions. Nevada does, however, reduce permanent employees' salaries and wages for each agency by anticipated savings resulting from vacant positions. Salaries and wages funding is reduced by an amount equal to the agency's vacant position savings averaged over the previous three-year period.

Wisconsin

Wisconsin uses a process similar to North Dakota's for appropriating funds for salaries and wages, including basing the appropriations on FTE positions. However, instead of allowing agencies to project their employee salary levels for the first month of the new biennium, Wisconsin appropriates funding for salaries and wages based on actual salary levels being paid at the time the budget request or the executive budget is prepared. This amount is considered the base level funding for salaries and wages and is the amount appropriated to each agency for next fiscal period. The Governor recommends, and the legislature approves, as adjusted, a lump sum amount that is appropriated to the Wisconsin Department of Administration as a funding pool for executive branch agencies containing funding anticipated to be needed for salary increases, health insurance increases, or other salary-related adjustments. This amount is available for transfer to state agencies, upon request, justification, and approval by the

Department of Administration for additional salaries and wages funding needed by the agency if the agency is unable to provide adequate funding for its salaries and wages within its base level funding amount. The amounts and reasons for the transfers are reported to the Wisconsin Legislative Fiscal Bureau.

Wyoming

Wyoming uses a process similar to North Dakota's for appropriating funds for salaries and wages, including basing the appropriations on FTE positions. The Governor, in preparing the executive budget recommendation, includes funding for the anticipated salaries and wages and related fringe benefits for the authorized number of FTE positions for each agency. Funding for salary increases is appropriated as funding pools to higher education, the executive branch, the judicial branch, and the legislative branch. During the fiscal year, amounts are allocated to each agency from the pools. The Governor recommends and the legislature determines the pool amounts based on the amounts needed to bring employees' salaries to a specified percentage of the market; therefore, salary increases vary by employee occupation based on market conditions.

Recommendation

The committee makes no recommendations regarding its study of the process of appropriating state agency salaries and wages.

STUDY OF CONTRIBUTIONS TO STATE EMPLOYEE HEALTH INSURANCE PREMIUMS

Pursuant to Section 39 of House Bill No. 1015, the committee was assigned a study of the state contribution to the cost of state employee health insurance premiums, including the feasibility and desirability of establishing a maximum state contribution.

Background Information

Chapter 54-52.1 provides group medical insurance is available to any employee who meets the eligibility requirements of being a permanent employee of the state. To be eligible, an employee must be at least 18 years of age, occupy a regularly funded position, work a minimum of 20 hours per week, and work at least 20 weeks each year. Temporary employees who work a minimum of 20 hours per week and 20 weeks per year may purchase health insurance at their own expense or the employing agency may pay the premium.

The 1963 Legislative Assembly enacted Chapter 52-12 which authorized state agencies, either individually or jointly with other agencies, to enter a group hospitalization and medical care plan and group life insurance plan for each agency's employees. The agencies were required to pay $5 per month for each participating employee's insurance premium. An employee could elect to participate in either a single or family plan. The 1971 Legislative Assembly repealed Chapter 52-12 and enacted Chapter 54-52.1 establishing the uniform group insurance program. The program was placed under the authority of the Public Employees Retirement Board. The board was required to solicit bids and contract for the provision of insurance benefits coverage with an insurance carrier determined by the board.

From 1971 to 1983, Blue Cross Blue Shield of North Dakota provided and administered the health insurance benefits plan for public employees. In 1983 the Retirement Board was authorized by Section 54-52.1-04.2 to establish a plan of self-insurance for providing health benefits coverage under an administrative services-only contract or a third-party administrator contract if the board determined during any biennium that a self-insured plan is less costly than the lowest bid submitted by an insurance carrier. The board exercised the option to implement a self-insurance health benefits plan and administered the program in that manner from July 1, 1983, through June 30, 1989.

Rising health care costs in the state were the primary reason for the cashflow difficulties experienced in the health benefits plan. In the 1985-87 biennium, the Legislative Assembly appropriated funds for a 20 percent premium increase, and claims costs increased 42 percent.

Although the Retirement Board began its administration of the self-insured health benefits plan on July 1, 1983, with reserves of $2,143,880, claim expenditures and other expenses of the program exceeded premium income and other revenue in 1984. By June 1987, the fund balance, as indicated in audited financial statements of the plan, was a negative $4,759,963 with estimated outstanding claims payable of $4,600,000.

In 1987 the Retirement Board incorporated various cost-containment components into the health benefits plan which included:

1. Implementation of a program of concurrent review of inpatient hospitalizations designed to eliminate unnecessary treatment or prolonged hospital stays and to allow consideration of less expensive appropriate treatment for long-term medical care.
2. Implementation of a program of mandatory second surgical opinions for certain elective surgeries. (This program did not generate anticipated results and after a one-year trial period was discontinued.)

3. Expansion of contract deductibles to include all inpatient, outpatient, and physician services.
4. Increase in the coinsurance base from the first $2,000 in charges to the first $4,000 in charges.
5. Implementation of a preferred pharmacy program.
6. Establishment of a separate premium rate for retirees, based on retiree claims experience.
7. Introduction of a $25 copayment for each hospital emergency room visit.
8. Adjustment of the Medicare coordination of benefits formula applied to retiree members of the plan.

Due to the introduction of these cost-containment initiatives and the availability to public employees of a number of attractive health maintenance organization plans, approximately 3,350 membership contracts constituting 23 percent of the total contracts of the health benefits plan were lost during the 1987 open enrollment period, resulting in a decrease of approximately $563,000 per month in premium income.

The decision by the Medcenter One HMO, a health maintenance organization that had the largest PERS eligible enrollment, to discontinue its participation agreement with PERS as of July 1, 1988, and substantial increases in premiums charged by other health maintenance organizations resulted in a substantial number of public employees choosing the PERS health benefits plan during the 1988 open enrollment period.

In January 1989, the Retirement Board voted to end the state-funded health insurance program and buy the coverage from Blue Cross Blue Shield of North Dakota. Officials of PERS predicted the state would end the 1987-89 biennium with a $3.5 million deficit and would need to increase premium rates by 65 percent in 1989-91. The Blue Cross Blue Shield bid of about $35 million to fund state employees' health insurance for the 1989-91 biennium included provisions that the company would absorb about $5 million in unpaid claims when it took over in July 1989.

Senate Bill No. 2026 (1989) appropriated $1.2 million from the fund for unemployment compensation claims to PERS for the state group health program for the period beginning January 1, 1989, and ending June 30, 1991.

Until 1993, the health insurance program charged premiums based on each employee's election of a single or family plan. Beginning in the 1993-95 biennium, the Retirement Board began to charge a combination rate that is a blended rate per employee whether a single or family plan is chosen. The blended rate enables agencies to budget the same premium rate for all employees; therefore, an agency's budget is not adversely affected if an employee electing to receive single health insurance coverage quits and is replaced by an employee electing to receive family coverage. The schedule below shows the premiums charged since the program began in 1963.

Biennium	Single Plan	Percentage Change	Family Plan	Percentage Change	Combination Rate	Percentage Change
1963-65	$5.00		$21.00			
1965-67	$8.55	71.0%	$21.50	2.4%		
1967-69	$10.75	25.7%	$25.00	16.3%		
1969-71	$14.45	34.4%	$34.90	39.6%		
1971-73	$15.95	10.4%	$41.90	20.1%		
1973-75	$14.46	(9.3%)	$41.90	0.0%		
1975-77	$19.50	34.9%	$59.95	43.1%		
1977-79	$25.50	30.8%	$67.42	12.5%		
1979-81	$34.84	36.6%	$87.40	29.6%		
1981-83	$42.68	22.5%	$107.07	22.5%		
1983-85	$50.28	17.8%	$140.28	31.0%		
1985-87	$60.00	19.3%	$168.00	19.8%		
1987-89	$68.28	13.8%	$191.28	13.9%		
1989-91	$99.82	46.2%	$280.39	46.6%		
1991-93	$108.00	8.2%	$304.00	8.4%		
1993-95					$254.00	
1995-97					$265.00	4.3%
1997-99					$301.00	13.6%
1999-2001					$349.72	16.2%
2001-03					$409.09	17.0%
2003-05					$488.70	19.5%
2005-07					$553.95	13.4%
2007-09					$658.08	18.8%
2009-11					$825.66	25.5%
2011-13					$886.62	7.4%
2013-15					$981.69	10.7%

From 1963 through 1969, the state contributed $5 per month toward the cost of health insurance for state employees. State employees paid any additional amount for single or family coverage. During the 1969-71 biennium, the state contributed $7.50 per month. For the period 1973 through 1979, the state paid the cost of a single health insurance plan. Employees choosing a family plan paid any additional cost. Since 1979, the state has paid the full cost of either a single or family plan for eligible state employees.

The schedule below provides information on health insurance premiums and the cost of health insurance increases since the 1997-99 biennium.

State Employee Health Insurance Increases (Excluding Higher Education)

Biennium	Monthly Premium	Increase From Previous Biennium	Percentage Increase	General Fund	Special Funds	Total
1997-99	$301	$36	13.6%	$7,026,674	$3,619,802	$10,646,476
1999-2001	$350	$49	16.3%	$6,989,537	$3,858,174	$10,847,711
2001-03	$409	$59	16.9%	$11,182,551	$6,001,252	$17,183,803
2003-05	$489	$80	19.6%	$8,027,122	$8,258,216	$16,285,338
2005-07	$554	$65	13.3%	$5,335,798	$7,903,870	$13,239,668
2007-09	$658	$104	18.8%	$9,115,817	$12,346,031	$21,461,848
2009-11	$826	$168	25.5%	$15,889,790	$20,215,824	$36,105,614
2011-13	$887	$61	7.4%	$7,179,809	$5,995,847	$13,175,656
2013-15	$982	$95	10.7%	$11,127,312	$9,700,989	$20,828,301

The committee learned that a PERS consultant is estimating health insurance premium rates to increase by 21 percent during the 2015-17 biennium, from $982 per month to $1,185 per month. Insurance plan reserves may be used to pay for a portion of the increased premiums. Adjustments may also be made to the plan benefits to reduce premium amounts.

High-Deductible Health Plan

Section 54-52.1-18, as enacted by the 2011 Legislative Assembly, requires the Public Employees Retirement Board to develop and implement a high-deductible health plan with a savings account as an alternative to the regular health insurance plan. The section requires the difference between the cost of single and family health plan for state employees to be deposited in a health savings account for the benefit of the participating employee. The high-deductible health plan has higher annual deductibles and larger out-of-pocket costs which are partially offset by the employer contribution to the health savings account. The health savings account is not subject to federal income tax at the time of deposit and funds may be carried over and used in subsequent years. The account is owned by the participant, the state makes contributions to the account, there is no fund balance limit, funds in the account continue into subsequent years if not used, and the account is portable if the employee discontinues employment with the state. The state currently contributes $60.74 per month into the account for employees with a single plan and contributes $147 per month into the account for employees covered under a family plan.

As of April 2013, there were 15,262 state contracts for the regular health insurance benefit, and 122 employees were enrolled in the high-deductible health plan.

Calculation of Health Insurance Premiums

The committee learned during the spring and summer of even-numbered years, PERS begins the process to obtain bids for state employee health insurance policies for the following biennium. Bids are normally returned in August, reviewed by PERS, and then submitted to OMB for inclusion in the executive budget.

Bids received for health insurance premiums generally include several options that may affect the amount of the premium. Options include changes in deductible amounts, coinsurance amounts, copayment amounts, and prescription drug benefits. The health insurance plan may also have reserves that can be used to buy down the cost of premiums.

Health Insurance Premiums Paid by Political Subdivisions

The committee received information regarding health insurance premiums paid by political subdivisions in the state. The percentage of a single plan paid by political subdivisions ranged from 75 to 100 percent. The percentage of a family plan paid by political subdivisions ranged from 41 to 100 percent.

State Employee Health Insurance Premiums Paid by Other States

The committee reviewed a report prepared by NCSL detailing the amount of health insurance premiums paid by other states for state employees during 2012. The report indicated the average monthly cost of a standard individual health insurance policy was $562.69, with the state paying on average $492.50 and the employee paying on average

$70.40. The average monthly cost of a family health insurance policy was $1,412.52, with the state paying on average $1,111.74 of the premium and the employee paying on average $300.50.

Federal Affordable Care Act

The committee learned the state health plan is exempt from certain provisions of the federal Affordable Care Act as long as the grandfathered status is continued. The grandfathered status may be lost if certain existing plan benefits are not maintained or if the employer contribution to employees' health insurance premiums is reduced by more than 5 percent from the contribution rate in effect on March 23, 2010. If an employee is required to pay more than 5 percent of a single or family premium rate the state also may lose its grandfathered status.

Estimated Employee Costs Based on Percentage Contributions for Premiums

The committee learned for the 2013-15 biennium, state agencies are charged a blended rate of $981.69 per month for a state employee's health insurance premium. The blended rate is based upon a single health insurance plan rate of $472.74 per month and a family health insurance plan rate of $1,139.34. As of March 2014, there were 3,384 employees with a single plan and 11,687 employees with a family plan. The schedule below details the monthly cost to state employees if they were required to pay a percentage of their health insurance premiums based on 2013-15 biennium premium rates.

Monthly Premium[1]	1 Percent of Premium	2 Percent of Premium	3 Percent of Premium	4 Percent of Premium	5 Percent of Premium
Single plan - $472.74	$4.73	$9.45	$14.18	$18.91	$23.64
Family plan - $1,139.34	$11.39	$22.79	$34.18	$45.57	$56.97

[1]Reflects monthly premiums for the 2013-15 biennium.

The table below details the estimated biennial amounts that would be paid by state employees if they were required to pay a percentage of health insurance premiums based on 2013-15 biennium premium rates.

Estimated Total Biennial Amounts to Be Paid by State Employees for Health Insurance Based on Percentage of Premium Paid						
	Number of Plans	1 Percent	2 Percent	3 Percent	4 Percent	5 Percent
Single plan	3,384	$384,152	$767,491	$1,151,643	$1,535,795	$1,919,946
Family plan	11,687	3,194,758	6,392,322	9,587,080	12,781,838	15,979,401
Total	15,071	$3,578,910	$7,159,813	$10,738,723	$14,317,633	$17,899,347

Recommendation

The committee recommends House Concurrent Resolution No. 3003 to continue the study of state employee health insurance premiums, including a review of the feasibility and desirability of the state health plan retaining its grandfathered status under the federal Affordable Care Act.

STUDY OF THE PURCHASE OF THE RESEARCH ENTERPRISE AND COMMERCIALIZATION BUILDING ON THE CAMPUS OF THE UNIVERSITY OF NORTH DAKOTA

Pursuant to the directive of the Chairman of the Legislative Management, the committee was assigned a study of State Board of Higher Education activities relating to any agreement or financing associated with the purchase of the Research Enterprise and Commercialization (REAC) building from the University of North Dakota (UND) Research Foundation. As part of the study, the committee was to review the following:

- Proposed use or obligation of state or other funding for which the state was not legally obligated to pay;
- The manner in which the negotiations to purchase the building complied with legislative intent and how the interests of taxpayers were weighed against the interest of the creditors; and
- The effect of the provisions of the State Board of Higher Education's ground lease with the foundation on the disposition of the building if the building was not purchased by the State Board of Higher Education.

Background

In November 2006, UND entered a ground lease with the UND Research Foundation to lease approximately 45,000 square feet of state-owned land to the foundation for the construction of the REAC building. Section 54-01-27 allows state agencies or institutions to enter agreements to lease real property owned by the state to private entities. The UND Research Foundation, which is registered with the Secretary of State as a private nonprofit entity, obtained financing for the building, and construction began in 2008 and was completed in 2009.

The 2013 Legislative Assembly through Section 23 of Senate Bill No. 2003 authorized the State Board of Higher Education to enter agreements to purchase the REAC building from the UND Research Foundation and enter agreements to finance the purchase. The section further requires the State Board of Higher Education to provide a report to the Budget Section regarding the purchase of the building.

Building History and Construction

The committee learned the previous President of UND undertook a project to increase research and commercialization facilities on the campus. A nonprofit research foundation was formed to generate financial support and partners for the construction of a building on campus. The research foundation obtained financing for the building which was eventually constructed. However, soon after construction was complete, an economic downturn reduced the market demand for the type of facilities included in the building and the foundation experienced financial difficulties.

The committee learned the cost to construct the REAC building was $17,114,539 and research equipment and furniture for the building cost an additional $1,780,656. The following schedule details the sources of the funding for the project:

REAC Building - Sources of Funds for Construction and Equipment	
Federal Economic Development Administration grant	$1,499,621
Centers of excellence project funding	3,557,547
Department of Commerce (centers of excellence funding)	1,493,664
City of Grand Forks	500,000
Department of Energy and centers of excellence	1,079,451
Loans	10,000,000
Total	$18,130,283

The schedule below details liabilities incurred by the UND Research Foundation to construct the building.

UND Research Foundation - Liabilities Incurred to Construct the REAC Building	
Bremer Bank - Construction loan	$6,250,000
Bremer Bank - Working capital loan	250,000
North Dakota Development Fund	1,000,000
Tax-exempt bond issued through Grand Forks County	2,500,000
Capital leases for furniture	494,141
Total	$10,494,141

As of December 31, 2012, the UND Research Foundation had total liabilities of $9,612,945. The foundation currently has no liabilities due to UND assuming the liabilities associated with the building.

Provisions of Ground Lease

The committee reviewed the ground lease of state land between the State Board of Higher Education (acting through UND) and the UND Research Foundation. The ground lease agreement for the REAC building provided for the following:

- The foundation had the right to obtain a loan secured by the facility but was prohibited from encumbering the land.
- A lender with a security interest in the building could assume possession of the building, but only subject to the terms of the lease to which the foundation was bound and subject to the approval of the State Board of Higher Education and UND.
- If the foundation or an assignee lender had defaulted on terms of the lease or if any of the conditions were present to allow UND to exercise its right to immediately terminate the lease, UND would have had the right to demand that the building be removed from the property or could have negotiated other terms with the lender.

The committee learned there are no statutory provisions that specifically address the construction of a building by a private party on land leased from the state. The original ground lease between UND and the UND Research Foundation was terminated when UND purchased the REAC building on September 16, 2013.

Building Research and Office Space

The committee learned the REAC building contains 31,982 rentable square feet, of which 14,263 square feet are currently leased to private entities and 3,436 square feet are occupied by the UND School of Medicine and Health Sciences. A $1.5 million federal Economic Development Administration grant was used for a portion of the building construction costs. A requirement of receiving the federal Economic Development Administration grant funds is that the facility be used for economic development purposes, including the growth and development of technology-based

companies focusing on life sciences and advanced engineering. Due to the grant, a maximum of 20 percent of leasable space in the building may be used for offices. Repayment of the grant would remove the space use restrictions on the building.

The committee reviewed the following schedule detailing the amount of space leased in the REAC building for fiscal years 2009 through 2013 and the related lease income:

Fiscal Year	Square Feet Leased	Lease Income
2009[1]	17,964	$252,049
2010	17,964	$547,693
2011	30,893[2]	$1,039,706
2012	30,893[2]	$1,774,209
2013	22,066	$604,022

[1]The facility was first occupied in January 2009.

[2]Includes 10,502 square feet leased by UND in fiscal year 2011 and 9,262 square feet leased by UND in fiscal year 2012. The space was leased pursuant to an agreement between UND and the UND Research Foundation.

As of July 2014 the building occupancy rate is above 60 percent. Approximately 10 percent of leasable space in the REAC building is unfinished. The space is being left unfinished to allow potential lessees the opportunity to customize the space for their needs.

The committee learned UND has provided the following lease and support payments to the UND Research Foundation since 2009:

Lease agreement payment made in fiscal year 2011	$335,000
Lease agreement payment made in fiscal year 2012	1,441,374
Support payment made in fiscal year 2013	250,000
Total	$2,026,374

Financing of Building Purchase

The committee learned UND issued a request for proposal on July 2, 2013, for a loan to purchase the REAC building. On September 12, 2013, Bremer Bank and UND entered into a contract for Bremer to provide UND with a $9.8 million loan to purchase the REAC building. The contract specified the loan term is for 20 years at a 5.38 percent interest rate. The purchase of the building took place on September 16, 2013.

University System Foundations

The committee learned there are more than 20 foundations that exist for the support of University System institutions. State Board of Higher Education policy requires each institution to have an agreement in place with an institution foundation that specifies several items, including services provided by each entity, accounting requirements, government functions delegated to the foundation, and reporting relationships for shared employees.

The committee learned several institution foundations have obtained loans for capital and other projects. There are approximately 30 projects at nine institutions that required a foundation to obtain a loan.

Recommendation

The committee makes no recommendations regarding its study of the purchase of the Research Enterprise and Commercialization Building on the campus of UND.

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.

Status of the General Fund and Selected Special Funds

The committee received updates regarding the status of the general fund and selected special funds. The following is a summary of original and revised 2013-15 biennium general fund and selected special fund ending balance estimates:

Fund	Actual Balance - June 30, 2013	Estimated Balance - June 30, 2015 (Legislative Forecast)	Estimated Balance - June 30, 2015 (Preliminary Revised Forecast)
General fund	$1,396,059,186	$87,043,928	$583,594,519[1]
Budget stabilization fund	$583,545,799	$583,545,799	$583,545,799
Legacy fund	$1,314,842,496	$3,096,602,513	$3,823,919,403

Fund	Actual Balance - June 30, 2013	Estimated Balance - June 30, 2015 (Legislative Forecast)	Estimated Balance - June 30, 2015 (Preliminary Revised Forecast)
Foundation aid stabilization fund	$335,364,942	$615,436,791	$710,975,584
Property tax relief fund	$341,790,000	$657,000,000	$657,000,000

[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.

2015-17 Biennium Preliminary General Fund Revenue Forecast

The committee received information regarding the revised general fund revenue forecast for the 2013-15 biennium and the preliminary 2015-17 biennium general fund revenue forecast. The following schedule compares the forecasts:

General Fund Revenue Forecasts					
	2013-15 Biennium			2015-17 Biennium	
Tax Type	2013-15 Biennium Legislative Estimates	Revised 2013-15 Biennium Forecast	Difference	2015-17 Biennium Preliminary Forecast	Difference From 2013-15 Biennium Revised Forecast
Sales and use	$2,472,947,500	$2,469,840,100	($3,107,400)	$2,667,659,000	$197,818,900
Motor vehicle excise	323,123,500	289,673,958	(33,449,542)	349,409,000	59,735,042
Individual income	797,654,355	1,032,509,203	234,854,848	1,060,828,000	28,318,797
Corporate income	377,739,645	456,823,247	79,083,602	470,489,000	13,665,753
Insurance premium	73,352,976	81,593,441	8,240,465	77,600,000	(3,993,441)
Financial institutions	0	(4,871,446)	(4,871,446)	0	4,871,446
Oil and gas production	133,834,002	146,071,108	12,237,106	133,834,000	(12,237,108)
Oil and gas extraction	166,165,998	153,928,892	(12,237,106)	166,166,000	12,237,108
Gaming	8,174,696	7,497,781	(676,915)	7,000,000	(497,781)
Cigarette and tobacco	57,953,000	59,567,291	1,614,291	61,560,000	1,992,709
Wholesale liquor	19,142,000	18,518,019	(623,981)	18,867,000	348,981
Coal conversion	39,300,000	38,875,236	(424,764)	39,578,000	702,764
Mineral leasing fees	19,000,000	28,448,054	9,448,054	19,000,000	(9,448,054)
Departmental collections	74,394,098	80,669,034	6,274,936	80,600,000	(69,034)
Interest	32,666,716	21,669,430	(10,997,286)	21,600,000	(69,430)
Total	$4,595,448,486	$4,880,813,348	$285,364,862	$5,174,190,000	$293,376,652

Oil and Gas Tax Allocations

The committee reviewed the following schedule detailing the August 2014 revised estimate of allocations of oil and gas production and oil extraction taxes for the 2013-15 biennium and the preliminary estimate for the 2015-17 biennium.

Estimated Allocations of Oil and Gas Production and Oil Extraction Taxes			
	2013-15 Biennium	2015-17 Biennium	Difference
General fund	$300,000,000	$300,000,000	$0
Legacy fund	2,454,395,777	3,186,498,242	732,102,465
Property tax relief fund	341,790,000	341,790,000	0
Strategic investment and improvements fund	1,289,798,492	2,019,825,077	730,026,585
Political subdivisions	776,469,055	967,489,008	191,019,953
Tribal allocations	513,309,913	583,200,000	69,890,087
Foundation aid stabilization fund	375,610,642	517,915,350	142,304,708
Common schools trust fund	375,610,642	517,915,350	142,304,708
Resources trust fund	747,021,283	1,031,630,700	284,609,417
Oil and gas impact grant fund	240,000,000	240,000,000	0
State disaster fund	22,000,000	22,000,000	0
North Dakota outdoor heritage fund	23,790,719	29,577,773	5,787,054
Renewable energy development fund	3,000,000	3,000,000	0
Energy conservation fund	1,200,000	1,200,000	0
Well plugging and site reclamation fund	10,000,000	10,000,000	0
Oil and gas research fund	10,000,000	10,000,000	0
Total	$7,483,996,523	$9,782,041,500	$2,298,044,977

The oil and gas tax allocations for the 2015-17 biennium are based on an average daily oil price of $90 per barrel and average daily oil production ranging from 1.3 million to 1.4 million barrels.

Oil and Gas Information

The committee received information regarding oil and gas development in the state. The committee learned the first phase of drilling in the Bakken Formation is nearing completion while the second phase of drilling will take

approximately 20 years. Approximately 2,000 wells per year are expected to be drilled in western North Dakota. There are currently 15,097 active producing wells in the state and the number of active wells may increase to 60,000 by the year 2035. The operation of 185 drilling rigs generates approximately 22,000 temporary drilling jobs and another 13,000 temporary jobs building infrastructure.

The committee learned oil spacing units and well pads are being designed to drill multiple wells. The Bakken and Three Forks Formations contain several layers and up to four different wells may be drilled into a layer. Up to 20 wells may be drilled on a typical 1,280-acre spacing unit. Current oil development technology allows a well to extract approximately 4 to 12 percent of the oil in the Bakken formation. However, oil producers are conducting pilot projects which may allow for up to 24 percent of oil to be recovered.

The committee learned pipeline infrastructure to transport oil and gas has expanded which is reducing the amount of truck traffic in oil and gas development areas. Oil companies are also working to expand natural gas gathering lines which will decrease the amount of natural gas flared at oil wells. The Industrial Commission recently approved rules to reduce gas flaring to 26 percent beginning October 2014.

The committee learned it is difficult to predict the price of oil produced in North Dakota. Additional pipeline and rail transportation options are increasing the number of available markets for North Dakota oil. However, some major markets are experiencing excess inventories of sweet crude oil which may lead to weak crude oil prices in the future. The required price per barrel of oil for a well to be profitable can significantly vary by county. For a well to be profitable in Divide County, the price of oil needs to be at least $85 per barrel while the breakeven point in McKenzie County is $28 per barrel.

The committee learned that based on average daily oil production of 1.3 million to 1.4 million barrels, a one dollar change in the average daily oil price results in a change in biennial oil tax collections of $106.4 million. Based on an average daily oil price of $80 per barrel, a 100,000-barrel change in the average daily oil production results in a biennial change in oil tax collections of $630.7 million.

Transportation Information

The committee received an update on transportation issues. The committee learned the 2013 Legislative Assembly appropriated $620 million of funding from the general fund with an emergency clause to allow the Department of Transportation to begin road projects immediately. Some of the projects this funding is being used for include a four-lane road project near Watford City and Alexander, highway bypasses at Williston and Watford City, and improvements to other state roadways in areas affected by energy development.

The committee reviewed the following schedule detailing 2013-15 biennium funding for road construction projects:

2013-15 Biennium Road Construction Funding (Amounts Shown in Millions)

	Western North Dakota	Central and Eastern North Dakota	Total
State funding for state highway projects	$1,161.6		$1,161.6
Statewide transportation improvement program (federal funds, state matching funds, local matching funds)	148.8	$450.0	598.8
Federal funding for emergency relief projects (carryover over 2011-13 biennium)	31.1	77.0	108.1
State funds for transportation funding distributions to non-oil-producing political subdivisions		100.0	100.0
State funds for non-oil-producing county roadway projects		120.0	120.0
State funds for oil-producing county roadway projects	160.0		160.0
State funds for oil-impacted township roads	8.8		8.8
Total	$1,510.3	$747.0	$2,257.3

The committee received an update on transportation funding estimates for the 2015-17 biennium. The estimated amount of federal highway funding to be received by the Department of Transportation in the 2015-17 biennium is uncertain because Congress has not yet approved an appropriation bill to distribute federal highway funds to states. The state has been receiving approximately $240 million of federal highway construction funding each year. State motor vehicle fuels taxes and motor vehicle registration fee collections have been increasing during the past several bienniums. However, the department expects the growth in collections to stabilize during the 2015-17 biennium.

Housing Incentive Fund

The committee received an update on the housing incentive fund. The committee learned the fund was established to assist in the development of affordable multifamily rental housing units to be occupied by essential service workers and

low- to moderate-income level families. For the 2013-15 biennium, the fund consists of $15.4 million of general fund appropriations and up to $20 million of contributions from private entities. Private entities are eligible to receive an income tax credit for any amounts contributed to the fund.

Funds were awarded during two separate application periods in 2013. During the first round of applications, a total of 18 projects received support totaling $20.4 million. One project that was awarded $1.5 million in funds was discontinued; therefore, the funding was reallocated during the second round of applications. During the second round of applications, a total of 16 projects were awarded support totaling $16.5 million.

Department of Human Services Budget Information

The committee received updates on the Department of Human Services budget. The committee learned the department anticipates receiving all budgeted federal funding during the 2013-15 biennium and does not anticipate any major federal fund variances for the 2015-17 biennium. Major budget issues for department for the 2015-17 biennium include costs-to-continue Medicaid grants, workforce issues, and Medicaid Expansion.

The committee learned approximately 13,000 individuals are enrolled in Medicaid Expansion. Preliminary data indicates most enrollees are adults with children and most enrollees live in rural areas. The department estimated that 20,500 individuals would become eligible under Medicaid Expansion. The department is providing information to the public regarding the expanded Medicaid program through the department's website, public service announcements, and partnerships with other agencies, such as the Indian Affairs Commission.

Department of Public Instruction Budget Information

The committee received information regarding the budget of the Department of Public Instruction. The committee learned 13.6 percent of the department's $2.16 billion budget is federal funds. The department anticipates receiving all of the federal funds included in its 2013-15 budget.

The committee received information regarding state school aid payments. The committee learned the total 2013-15 biennial appropriation for state school aid was in excess of $1.8 billion. The department anticipates $19.8 million of this amount will not be spent.

The committee learned that after a decline by 25,000 students over a 15-year period ending in 2010, statewide projections show moderate enrollment increases over the next decade. Enrollment is estimated to increase by 3,500 students annually during the next biennium. The department estimates an additional $275 million will be needed for state school aid for the 2015-17 biennium relating to costs to continue, anticipated per student payment increases, and the increased projected enrollment. Of this amount, the state share would be approximately $200 million. The enrollment is expected to remain steady or increase in North Dakota's major cities' school districts, while enrollment in many of the small rural school districts is expected to experience declines.

University System Budget Information

The committee received an update on the 2015-17 biennium general fund budget request for the University System. The committee learned the University System will be requesting approximately $27 million for cost-to-continue items, $49 million to be distributed through the higher education funding formula based on completed student credit-hours, and 2015-17 biennium salary and benefit increases consistent with the executive budget recommendation. The University System is also requesting $203 million for capital projects, $32 million for increased extraordinary repairs base funding, and $20 million for deferred maintenance.

Common Schools Trust Fund

The committee received information regarding the common schools trust fund. The committee learned the federal Enabling Act of 1889 granted 2.5 million acres of land to the state for support of common (public) schools. The Enabling Act requires proceeds from the sale of the land to be placed in a permanent school fund, and interest from the fund is to be used to support common schools. Approximately 668,000 acres of land were also granted to the state for the benefit of other public institutions. Other revenue sources for the common schools trust fund include mineral royalties, a percentage of oil extraction taxes, tobacco settlement proceeds, and investment gains or losses.

The common schools trust fund currently consists of 635,000 acres of surface lands, 1.5 million acres of mineral rights, and approximately $3 billion of investment assets. The investment assets are estimated to increase to $4.4 billion by the 2017-19 biennium. Biennial distributions to common schools are in an amount equal to 10 percent of the five-year average value of investment assets of the fund. Approximately $130.3 million will be distributed from the fund during the 2013-15 biennium, and distributions during the 2015-17 biennium are estimated to be $204.3 million.

OTHER INFORMATION RECEIVED

The committee received other comments regarding the committee's assigned studies and other information regarding:

- Oil and gas impact grants.
- Agriculture commodity prices and farm incomes.
- The child support lien registry.
- The use of temporary positions by state agencies.
- Budget issues for the Department of Corrections and Rehabilitation.
- The resources trust fund.
- Budget request extensions granted by OMB.
- Legislative Council reports including the *2013-15 Biennium Report on Compliance with Legislative Intent*, the June 2014 *Analysis of Major State Trust Funds*, the 2015-17 Biennium Preliminary General Fund Budget Outlook, and updated *Budget and Fiscal Trends*.

GOVERNMENT SERVICES COMMITTEE

The Government Services Committee was assigned the following responsibilities:

- A study of facility needs of state agencies in the Bismarck area pursuant to Section 37 of 2013 House Bill No. 1015. The study was to include an evaluation of current and projected facility needs of state agencies, facilities on the Capitol grounds currently being used by state agencies, and facilities owned or leased by state agencies that are not located on the Capitol grounds.
- A study of the use of the structures and property of the James River Correctional Center and the State Hospital pursuant to Section 5 of 2013 Senate Bill No. 2015. The study was to include a determination of the best and most efficient use of the properties.
- A study of current state and federal benefits available to North Dakota veterans pursuant to Section 3 of 2013 Senate Bill No. 2344. The study was to include a review of statutory changes that would benefit North Dakota veterans and include possible changes to state income taxes and property taxes, the provision of veteran-focused incentives, assistance with obtaining and maintaining benefits, and assistance with obtaining and maintaining various life-enhancing services.
- Receive the annual report from the Committee on Employment of People with Disabilities detailing the committee's activities, goals, and progress in reaching these goals, and strategies and policies that can help the committee to realize its goals pursuant to North Dakota Century Code Section 50-06.1-16.
- Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority pursuant to Section 54-40-01.
- Receive by July 1, 2014, the Department of Corrections and Rehabilitation's plan to move the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center pursuant to Section 4 of 2013 Senate Bill No. 2015.
- Receive projected costs from the Adjutant General regarding writing, publishing, and distributing a record of all North Dakota veterans, including those killed in action and missing in action, since statehood pursuant to Section 1 of 2013 Senate Bill No. 2210.
- Receive a report from the Department of Veterans' Affairs during the 2013-14 interim regarding the status of the service dog training program, including benefits to veterans, number of applicants, and number of service dogs provided pursuant to Section 2 of 2013 Senate Bill No. 2344.

Committee members were Senators Ronald Sorvaag (Chairman), Ron Carlisle, Richard Marcellais, and David O'Connell and Representatives Roger Brabandt, Glen Froseth, Ed Gruchalla, Rick Holman, Karen Karls, George J. Keiser, Curtiss Kreun, Scott Louser, Gail Mooney, Chet Pollert, Vicky Steiner, and Alon Wieland.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

STUDY OF FACILITY NEEDS OF STATE AGENCIES IN THE BISMARCK AREA

The committee was assigned a study of facility needs of state agencies in the Bismarck area pursuant to Section 37 of 2013 House Bill No. 1015. The study was to include an evaluation of current and projected facility needs of state agencies, facilities on the Capitol grounds currently being used by state agencies, and facilities owned or leased by state agencies that are not located on the Capitol grounds. The study was to determine if additional facilities are needed for the operations of state agencies. If it was determined that additional space is needed, the committee was to review the most economical options for increasing the amount of facilities space available, including options for renovating or expanding existing buildings on the Capitol grounds, options for constructing new buildings on the Capitol grounds, and options for building or leasing facilities that are not located on the Capitol grounds.

Capitol Complex

The Capitol complex was established in 1883 when 320 acres were deeded to the Territory of Dakota from the Northern Pacific Railroad Company. After the first State Capitol was destroyed by fire in 1930, 160 acres around the perimeter of the complex were sold to pay for a new building which was completed in 1934. Additional acreage was sold in 1949, and other acreage is used as easements for water and streets. The current Capitol complex consists of 132 acres. Besides the Capitol building, other facilities at the complex include the Heritage Center, State Office Building, Governor's residence, Department of Transportation building, maintenance building, and the Liberty Memorial Building which houses the State Library.

Facility Management Division

The Facility Management Division of the Office of Management and Budget (OMB) is responsible for the overall daily operations and preservation of the State Capitol complex and surrounding 132-acre grounds. In addition, the division is responsible for providing space management services for most state agencies. All new construction, historical preservation and restoration, and extraordinary repairs are prioritized and forecasted for a 10-year period.

Capitol Grounds Planning Commission

The Capitol Grounds Planning Commission, provided for in Chapter 48-10, advises the Director of OMB and the Legislative Council on matters relating to the physical and aesthetic features of the interior and exterior of all buildings on the Capitol grounds. The commission consists of the Lieutenant Governor as Chairman and eight other members, including two citizens, one licensed architect, and one representative from the State Historical Society appointed by the Governor. The President of the Senate appoints two senators as members and the Speaker of the House of Representatives appoints two representatives.

Capitol Building Fund

The Capitol building fund was established at the time of statehood by the Enabling Act of 1889. Section 12 of the Enabling Act provided 50 sections of land to North Dakota upon statehood to be used for the purpose of financing construction of public buildings for legislative, executive, and judicial use. The Capitol building fund is made up of the land, proceeds from the sale of the land, and any investment income from the proceeds. Section 12 of the Enabling Act was amended by Congress in 1957 to expand the fund's use for construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvements of public buildings at the Capitol.

House Bill No. 1117 (1979) amended Section 48-10-02 to provide that the Board of University and School Lands invest and manage the fund on behalf of the Capitol Grounds Planning Commission. The bill further amended Section 48-10-02 to provide a continuing appropriation to the Capitol Grounds Planning Commission from the interest and income from the Capitol building fund not to exceed 50 percent of the unencumbered balance. Expenditures made under the continuing appropriation may be made, after consideration of the Capitol grounds master plan, for projects or planning but may not exceed $50,000 per biennium. The Legislative Assembly in 2013 House Bill No. 1015 increased the continuing appropriation limit to $175,000.

The Capitol building fund includes 9,994 surface acres. The Capitol building fund had a June 30, 2013, balance of $3,474,302. As of June 2014, it is estimated the Capitol building fund will have a June 30, 2015, balance of $3,164,440.

Capitol Complex Space Needs

The committee received information from the Facility Management Division regarding the Capitol complex and state facilities. The committee learned the Capitol complex contains a total of 397,923 square feet of office space for 1,629 full-time equivalent (FTE) positions in the Capitol tower, judicial wing, Department of Transportation building, State Office Building, the Heritage Center, and the Liberty Memorial Building. The committee learned, based on a standard of 230 square feet per occupant, the Capitol tower is designed to house 537 employees and the judicial wing is designed to house 453 employees. The number of square feet per FTE position ranges from 116 for a portion of the Tax Commissioner's office to 478 for the Historical Society Foundation space in the Heritage Center. The committee reviewed the Capitol complex master plan developed in 2000. The committee learned the 2000 master plan has not been updated. The committee also learned there is not a formal process to identify projected state agency space needs.

Space Away from the Capitol Grounds

In addition to the Capitol complex, there are several state-owned or state-leased facilities located in the Bismarck area. Examples of agencies owning facilities in the area include Workforce Safety and Insurance, the Department of Corrections and Rehabilitation, the Bank of North Dakota, and the Game and Fish Department. Some agencies, such as Workforce Safety and Insurance, lease a portion of its facilities to other state agencies. The average office space lease cost in the Bismarck area is approximately $12 to $13 per square foot. The committee learned the operating cost of leased space off the Capitol grounds is approximately $5 to $8 per square foot and the operating cost of space in the Capitol is $11.29 per square foot.

Agency Space Needs and Utilization

The committee received information from state agencies regarding space needs. The committee reviewed the results of a survey conducted to identify all office, meeting, and storage space leased or owned by state agencies in the Bismarck area. The survey identified the cost per square foot, use, and employee headcount for each agency location in the Bismarck area. The survey results indicate state agencies lease nearly 500,000 square feet of space away from the Capitol grounds in the Bismarck area. This number includes office, meeting, storage, and other space leased from the private sector and other state agencies, such as Workforce Safety Insurance. Leased space cost

ranges from $0.26 per square foot for 560 square feet of cold storage space leased by the Department of Trust Lands to $22.20 per square foot for 5,684 square feet of office space leased by the North Dakota University System. Agencies in the Bismarck area identified over 2 million square feet of state-owned space. Agencies reporting the most state-owned space included the Adjutant General (541,299 square feet) and the Department of Corrections and Rehabilitation (716,393 square feet). Total employee headcount for agencies in the Bismarck area identified in the survey was 5,122. The survey also identified projected space needs for each agency. Of the 50 agencies surveyed, 21 identified current or projected space needs. Space needs range from 200 square feet of work space identified by the Commission on Legal Counsel for Indigents to 24,660 square feet of office, meeting, training, and storage space identified by the judicial branch. Other state agencies identifying space needs include:

- Secretary of State;
- State Auditor;
- Attorney General;
- Tax Commissioner;
- Office of Administrative Hearings;
- Department of Trust Lands;
- School for the Deaf;
- University System;
- State Department of Health;
- Tobacco Prevention and Control Executive Committee;
- Indian Affairs Commission;
- Department of Veterans' Affairs;
- Department of Human Services;
- Insurance Commissioner;
- Labor Commissioner;
- Highway Patrol;
- Adjutant General;
- North Dakota Council on the Arts; and
- Parks and Recreation Department.

The committee received additional information from certain state agencies regarding their space needs.

- The judicial branch occupies 21,604 square feet of space in the judicial wing of the Capitol and leases 8,400 net square feet of office space in a building located off the Capitol grounds. The judicial branch indicated it has an unmet space need of 24,660 gross square feet. The committee toured the Supreme Court office space.
- The Attorney General's office has expanded and foresees further expansion in the future due to the increasing law enforcement needs of the state. The committee learned the State Crime Laboratory building may need to be expanded during the 2017-19 biennium.
- The Information Technology Department vacated approximately 10,000 square feet of office space in the judicial wing of the Capitol to consolidate its operations in one building located away from the Capitol grounds. The committee toured the vacant areas in the judicial wing. The committee learned the 10,000 square feet in the judicial wing of the Capitol vacated by the Information Technology Department will be used by the Supreme Court, the Secretary of State, the Department of Labor and Human Rights, and the Indian Affairs Commission.

Property Taxes

The committee learned state-owned property is exempt from local property taxes; however, state statute requires certain state agencies to make payments in lieu of property taxes. Five state agencies have made payments in lieu of property taxes since fiscal year 2011. The five agencies are the Adjutant General, Department of Trust Lands, Game and Fish Department, State Water Commission, and Workforce Safety and Insurance. The committee learned the Game and Fish Department paid over $481,000 in lieu of property taxes to multiple counties in fiscal year 2014 and Workforce Safety and Insurance paid over $181,000 in lieu of property taxes to Burleigh County in fiscal year 2014.

Recommendations

The committee recommends Senate Bill No. 2040 to provide an appropriation of $300,000 from the Capitol building fund to OMB to develop a master plan in conjunction with the Capitol Grounds Planning Commission for all state agencies with a physical location in the Bismarck area. The bill requires the master plan to identify and address current and projected space needs of state agencies in the Bismarck area and include the estimated costs to address the needs. The bill also requires OMB to provide periodic status reports on the development of the Bismarck area state agency master plan to the Legislative Management during the 2015-16 interim and to present the completed master plan to the Legislative Management by July 1, 2016.

STUDY OF THE USE OF STRUCTURES AND PROPERTY OF THE JAMES RIVER CORRECTIONAL CENTER AND THE STATE HOSPITAL

The committee was assigned a study of the use of the structures and property of the James River Correctional Center and the State Hospital pursuant to Section 5 of 2013 Senate Bill No. 2015. The study was to include a determination of the best and most efficient use of the properties.

State Hospital

The State Hospital was first authorized in 1883 and is located on the south side of Jamestown. The State Hospital is referenced in Article IX, Section 12, of the Constitution of North Dakota. It provides psychiatric and chemical dependency treatment to residents of the state. Chapter 25-02, which includes various provisions related to the Hospital, requires the Hospital to receive and care for all mentally ill persons as provided for in statute.

The State Hospital has a capacity to serve approximately 298 patients through inpatient or residential programs. Of this total, the Hospital can serve up to 76 individuals in the secure services unit which treats civilly committed sexually dangerous individuals. The Hospital, through a contract with the Department of Corrections and Rehabilitation, dedicates 90 of its beds for the Tompkins rehabilitation program which provides services to the department's inmates with chemical addictions.

The following is a summary of buildings located at the State Hospital, including usage and square feet:

Building	Uses	Square Feet
Learning Resource Center	Administrative offices, education services, library	40,800
Administration	Vacant - Used for emergency sleeping rooms for staff	24,675
Central receiving	Receive and store supplies	27,100
16 West	Plumbing and electrical shops; portion of building is vacant	39,990
Superintendent's residence	Former residence of superintendent; rented for special occasions	5,552
Powerhouse	Heating plant to supply steam to facility	39,285
Engineering warehouse	Storage for plumbing, electrical, and carpentry supplies	23,414
Warehouse	General storage	6,020
Grounds warehouse	Storage for grounds department	2,755
Implement shed	Storage for large equipment	5,370
Vehicle maintenance shop	Vehicle maintenance operations	4,650
Employees building	Apartment building for rentals to staff of the hospital and James River Correctional Center	34,345
Cottage 77-1	Housing for medical students and emergency overnight housing for staff	2,857
Cottage 77-2	Housing for medical students and emergency overnight housing for staff	2,857
Cottage 77-3	Rented to Head Start program	2,857
Cottage 77-4	Rented to staff	3,020
Cottage 77-4 garage	Double garage	680
Cottage 77-5	Housing for transitional living patients	3,020
Cottage 77-5 garage	Double garage	676
Cottage 78	Housing for transitional living patients	3,900
Grounds maintenance	Shop and storage for small vehicles and equipment	3,200
Tompkins Building	Tompkins program for chemical dependency treatment for male patients	34,660
GM Building	Sexual offender program	82,670
Water plant (mason)	Shop used for temporary or contracted masons	4,802
Sewage lift station	Connection to Jamestown city sewer system	800
Metal quonset	Storage for plant services department	3,130
Chapel	Vacant - Used for special occasions	13,140
Cottage 88	Staff rental	2,254
Cottage 88 garage	Single garage	308
Cottage 89	Transitional living for sexual offenders close to discharge	3,028
Swimming pool	Indoor pool for patient treatment	6,800
New Horizons Building	Tompkins program for chemical dependency treatment for women and treatment for psychiatric patients	75,485
LaHaug Building	Inpatient hospital for psychiatric patients and patients who have psychiatric and chemical dependency problems	135,495

Building	Uses	Square Feet
Electrical distribution	Emergency generator	1,800
Pedestrian tunnels	Connects various campus buildings	24,832
Total		666,227

The Legislative Assembly appropriated $1,775,168 for extraordinary repairs at the State Hospital for the 2013-15 biennium. Of this amount, $864,714 is for a street reconstruction project and $910,454 is for various projects, including roof repairs, floor repairs, building tuck-pointing, sewer repairs, electrical repairs, and heating and cooling repairs.

James River Correctional Center

Section 12-47-01 was amended in 1997 to permit the Director of the Department of Corrections and Rehabilitation to establish affiliated facilities at other locations throughout the state within the limits of legislative appropriations. The James River Correctional Center, which is located on the grounds of the State Hospital in Jamestown, was completed for use as a correctional facility in 1998. The 1997 Legislative Assembly appropriated $1,295,000 ($129,500 from the general fund and $1,165,500 of other funds) to the Department of Corrections and Rehabilitation for the purchase of property from the State Hospital for a medium security corrections facility. The 1997 Legislative Assembly also appropriated $3,276,412 ($344,030 from the general fund and $2,932,382 of other funds) for the renovation and remodeling of the property. The majority of other funds for the project were obtained through federal grants.

The James River Correctional Center is classified as a medium security facility and has a capacity of approximately 420 beds. The facility was used to house both male and female inmates until 2004 and now houses only male inmates. The Department of Corrections and Rehabilitation and Department of Human Services have entered a partnership agreement under which the James River Correctional Center provides food and laundry service to the State Hospital. Other agreements are in place between the agencies relating to training and other services provided between the facilities.

The following is a summary of buildings located at the James River Correctional Center, including usage and square feet:

Building	Uses	Square Feet
Main (ET) Building	General housing for inmates, including the medical service department and offices for security and safety personnel	87,530
Special Assistance Unit	Secure housing for inmates	27,890
Amusement hall	Recreational activities	15,210
Administration	Various administrative offices and training facilities	41,380
Kitchen	Food services	24,250
Dining building	Inmate dining	29,700
Laundry building	Laundry services	19,600
Roughrider Industries	Roughrider Industries programs	11,250
Maintenance shop	Maintenance	2,000
Front gate/security	Entrance checkpoint	200
Total		259,010

The Legislative Assembly appropriated $872,750 to the Department of Corrections and Rehabilitation for extraordinary repairs for the 2013-15 biennium. The funding was to be used to replace ventilation systems in the Main (ET) Building.

State-Owned Land

The committee learned the State Hospital is located on approximately 430 acres of land and the State Hospital manages a total of 3,060 acres of state-owned land. The State Hospital leases 1,183 acres of tillable agricultural land and 1,284 acres of land for livestock pasture and haying purposes. The tillable land is valued at approximately $3,500 to $5,000 per acre, the hay land is valued at approximately $1,500 to $2,000 per acre, and the pastureland is valued at approximately $1,000 per acre. The committee learned if all the leased land is sold, it would generate between $4.2 million and $4.9 million. The state-owned land managed by the State Hospital generated $175,786 in annual rental income in 2013 for the State Hospital. The committee learned the renters are responsible for payment of real estate taxes and in 2013, the renters paid $12,409 to Stutsman County in real estate taxes. The committee learned Section 57-02-08 identifies property exempt from taxation, which includes "[t]he leasehold interest in property owned by the state which has been leased for pasture or grazing purposes . . . ."

The committee learned the Department of Corrections and Rehabilitation manages 3,315 acres of state-owned land in Burleigh County and Morton County. The Department of Corrections and Rehabilitation leases 3,115 acres for various purposes and generated $230,636 of annual revenue in 2013 from the leased land. The committee learned

the rental income supports Roughrider Industries and royalty income has been used to pay for the State Penitentiary renovation/expansion project.

Potential Capital Projects and Deferred Maintenance

The committee learned the cost of maintaining the buildings at the State Hospital has averaged approximately $1 million per biennium. Potential future building improvements needed include:

- Upgrade the roof and mechanical, plumbing, and electrical systems of the Employees Building at a cost of $3.6 million;
- Upgrade the heating, electrical, plumbing, and fire alarm systems of the 16 West Building at a cost of $5.9 million; and
- Remove lead-based paint in the Administration Building at a cost of $500,000.

The committee learned deferred maintenance projects necessary during the 2015-17 biennium at the James River Correctional Center include:

- Security infrastructure;
- Elevator retrofits in the Main (ET) Building, Amusement Hall, and Administration Building;
- Air handling systems in the Main (ET) Building, Kitchen, and Amusement Hall; and
- Tunnel roof repair.

Use of Facilities

The committee toured the facilities of the State Hospital and the James River Correctional Center. The committee learned the State Hospital does not fully utilize all of its buildings. Partially unused buildings include:

Building	Square Footage	Square Feet Unused	Percentage of Use
Administration Building	24,675	24,675	0%
16 West Building	39,990	Approximately 30,000	25%
Chapel	13,140	13,140	0%

The committee learned the James River Correctional Center does not fully utilize all of its buildings. Partially unused buildings include:

Building	Square Footage	Square Feet Unused	Percentage of Use
Administration Building	41,380	6,207	85%
Outside maintenance shop	14,210	8,526	40%
Laundry Building	19,600	6,860	65%

The committee learned a master plan has never been completed for the James River Correctional Center. The committee learned representatives of the State Hospital support the completion of a master plan that encompasses both the State Hospital and the James River Correctional Center.

Recommendations

The committee recommends Senate Bill No. 2041 to provide an appropriation of $250,000 to the Department of Human Services to develop a master plan in conjunction with the Department of Corrections and Rehabilitation for the State Hospital and the James River Correctional Center. The bill requires the master plan to address land use, vacant structures, and current and projected space needs of the State Hospital and the James River Correctional Center. The master plan must also address the potential sale of a portion of the State Hospital's agricultural land, with the proceeds being used for capital improvement projects at the State Hospital. The bill also requires the Department of Human Services to provide periodic status reports on the development of the State Hospital and James River Correctional Center master plan to the Legislative Management and to present the completed master plan to the Legislative Management by July 1, 2016.

STUDY OF NORTH DAKOTA VETERANS' BENEFITS

The committee was assigned a study of North Dakota veterans' benefits pursuant to Section 3 of 2013 Senate Bill No. 2344. The study was to include the current state and federal benefits available to North Dakota veterans, including statutory changes that would benefit North Dakota veterans and include possible changes to state income taxes and property taxes, the provision of veteran-focused incentives, assistance with obtaining and maintaining benefits, and assistance with obtaining and maintaining various life-enhancing services.

Previous Studies

The 2007-08 Public Safety Committee, pursuant to 2007 House Concurrent Resolution No. 3063, studied the delivery and funding of veterans' services by the state and counties. The 2007-08 interim committee received information regarding benefits available to North Dakota veterans and the delivery and funding of veterans' services. The Government Services Committee learned 95 percent of the state's veterans' claims processed originate through county veterans' service officers.

Veterans' Service Agencies

The Government Services Committee received information on agencies and organizations that provide services to North Dakota veterans, including:

- **United States Department of Veterans' Affairs (VA)** - Administers a variety of benefits and services for servicemembers, veterans, dependents, and survivors. The VA operates the nation's largest integrated health care system, with more than 1,700 hospitals, clinics, community living centers, and other facilities. The VA benefits include health care, disability compensation, dental care, education and training, vocational rehabilitation, life insurance, home loan assistance, and burial benefits. The VA offers an array of programs and initiatives specifically designed to help homeless veterans live as self-sufficiently and independently as possible.
- **Administrative Committee on Veterans' Affairs (ACOVA)** - Responsible for the organization, policy, and general administration of all veterans' affairs in North Dakota. Pursuant to Section 37-18.1-01, ACOVA is comprised of 3 ex officio nonvoting members and 15 voting members. The 15 voting members are appointed by the Governor from each of the five major veteran organizations in the state--the American Legion, Veterans of Foreign Wars (VFW), Disabled American Veterans, Veterans of World War II, Korea, and Vietnam (AMVETS), and Vietnam Veterans of America. The three nonvoting members who serve in an advisory capacity include the Adjutant General, the Medical Center Director of the VA, and the Executive Director of Job Service North Dakota. The Governor appoints a Chairman and Secretary of ACOVA.
- **North Dakota Department of Veterans' Affairs (NDVA)** - Ensures every veteran in the state of North Dakota who has served in the military receives every benefit to which the veteran may be entitled from the VA, allied agencies, and from the state of North Dakota. The NDVA provides assistance, either directly or through county and tribal veterans' service officers, to North Dakota veterans and their dependents in obtaining federal and state benefits and disseminates current information to the state veteran population through the use of news media, county veterans' service officers, and veterans' organizations. The NDVA assists with claims for entitlement from the VA and counsels veterans on employment, educational programs, disability benefits, medical care entitlement, nursing home assistance, death benefits, and other related veterans' activities.
- **Veterans' Home** - Provides basic and skilled nursing care to eligible North Dakota veterans and spouses. The Veterans' Home currently has 98 basic care and 52 skilled nursing beds. To be eligible for admission, veterans must meet one of the following criteria:

  Be a bona fide resident of North Dakota for at least 30 days;

  Served in a North Dakota regiment;

  Entered the armed services as a North Dakota resident; or

  Be a spouse or surviving spouse of above veteran.

- **County veterans' service officers** - Actively cooperate with and coordinate the activities of the state and federal agencies within the county in which the officer serves to facilitate their operations and ensure promptness in the solution of the problems concerned with the reestablishment of returning servicemen and servicewomen in civilian pursuits.
- **Salvation Army** - Provides assistance to North Dakota veterans and their families who are homeless or at risk of homelessness. Services provided by the Salvation Army include case management; assistance in obtaining VA benefits; assistance in coordinating and obtaining other benefits which may include referrals to health care services, food pantries, and other basic needs; personal financial planning services; transportation services; and temporary financial assistance of time-limited payments to third parties for rent, utilities, security and utility deposits, transportation, and emergency supplies.
- **North Dakota Coalition for Homeless People** - Works with subgrantees, including the Salvation Army and Community Action, to administer funds provided through the supportive services for veteran families program with funding provided by the VA. The program works through private nonprofit organizations and consumer cooperatives to provide supportive services to low-income veteran families living in or transitioning to permanent housing. The program provides eligible veteran families with outreach, case management, and assistance in obtaining VA and other benefits which may include health care services, daily living services, personal financial

planning, transportation services, fiduciary and payee services, legal services, child care services, and housing counseling.

- **North Dakota Veterans' Coordinating Council** - Coordinates activities of veterans' organizations. The council consists of three members each from five major veterans' organizations. The duties of the council are to monitor legislation affecting veterans and their dependents, monitor programs established for veterans, and establish a system of public relations for veterans.
- **Inter-Service Family Assistance Committee (ISFAC)** - Provides a voluntary military cooperative partnership, through multiservice networking for training and assistance to ensure family readiness. The goal of the ISFAC is to strengthen existing family and servicemember delivery systems in the event of mobilization, deployment, or natural disaster through the interaction of committee members.
- **ND Cares** - Works through a coalition to strengthen an accessible, seamless network of support for servicemembers, veterans, families, and survivors in North Dakota; to identify issues or gaps in services and bring those issues to the attention of service providers in order to make improvements; and to provide consistency and focus regarding veterans' services and related issues. The committee learned recent activities of the ND Cares Task Force included developing a statewide representation of organizations, an organizational chart, and an initial strategic plan.

  The task force has also identified suicide and veteran homelessness as core priorities and designed an initial communications chart.

  The committee learned the next activities of the ND Cares Task Force include:

  Connecting fragmented systems to ensure an integrated response to the needs of veterans, resulting in a strong, adaptive, and connected system;

  Conducting an analysis of the benefits and services available compared to the veterans', servicemembers', families', and survivors' needs;

  Continuing to develop the ND Cares concept;

  Officially adopting the ND Cares brand; and

  Brief stakeholders and partner with agencies and organizations that are committed to assisting servicemembers, veterans, families, and survivors in North Dakota.

Veterans' Support Services

The committee received information on veterans' support services available to North Dakota veterans, including:

- **Veterans' aid fund** - A permanent revolving fund available for making loans to veterans or their widows/widowers. The maximum loan amount is $5,000, and the annual interest rate is 8 percent. The interest rate may not exceed 10 percent, and loans may be for up to 48 months. If the loan is repaid as agreed upon in the terms, one-half of the interest paid is refunded to the borrower.
- **Veterans' postwar trust fund** - A constitutional fund, the income of which is available for veterans' programs. The 2013 Legislative Assembly provided a $250,000 transfer from the general fund to increase the principal balance of the fund to generate additional income for programs authorized by law to benefit and serve veterans.
- **Hardship assistance grant** - A program providing assistance for individuals with an emergency need for dental work, eyeglasses, hearing aids, or other medical needs approved by the Commissioner of NDVA. Routine and maintenance procedures are not provided.
- **North Dakota Veterans Emergency Needs Charitable Fund** - A fund established by the NDVA to receive tax-deductible donations to provide resources for emergency needs of North Dakota veterans and their eligible dependents. The fund was established to meet one-time emergency needs of veterans that may include dental care, vision, hearing, transportation for medical treatment, and other special needs as approved by the fund advisors.
- **Homeless Veterans' Dental Program** - A fund established to increase the accessibility of quality dental care to homeless veteran patients and to help assure success in VA-sponsored and VA-partnership homeless rehabilitation programs throughout the United States.
- **Stand down events** - One-day to three-day events providing services to homeless veterans. Services provided include food; shelter; clothing; health screenings; VA and Social Security benefits counseling; and referrals to a variety of other services, such as housing, employment, and substance abuse treatment. Stand downs are collaborative events, typically coordinated between local veteran groups, other government agencies, and community agencies who serve the homeless.

Education Services

The committee received information on education services available to North Dakota veterans, including:

- **Veteran Educational Training Program (formally the Upward Bound program)** - An individualized educational program for veterans who seek academic preparation before entering or during postsecondary education. Coursework in English, computer literacy, mathematics, science, and reading is designed to prepare veterans for successful participation in postsecondary education. The 2013 Legislative Assembly approved House Bill No. 1289 appropriating $325,000 from the general fund to the University System for the veterans' educational training program.
- **Federal GI Bill** - An education benefit earned by active duty, selected reserve, and National Guard servicemembers. The benefit is designed to help servicemembers and eligible veterans with the costs associated with getting an education or training. The GI Bill has several programs and each is administrated differently, based on eligibility and duty status.
- **Leave No Veteran Behind** - A national 501(c)(3) nonprofit organization run by veterans to assist those who are serving or have served in the United States military with student loans. Leave No Veteran Behind accepts private donations to assist veterans with student loans. Veterans receiving assistance are required to perform 100 hours of community service.
- **Survivors and Dependents Educational Assistance** - An education and training program providing opportunities to eligible dependents of certain veterans. The VA program offers up to 45 months of education benefits. These benefits may be used for degree and certificate programs, apprenticeship, and on-the-job training.
- **North Dakota University System tuition waivers** - A waiver of tuition available for qualified dependents attending any University System college. Pursuant to Section 15-10-18.3, a dependent of a North Dakota veteran who was killed, totally disabled, or declared missing in action may attend a University System institution without paying tuition or fees for up to 45 months. In addition, Chapters 37-07.1 and 37-07.2 provide tuition assistance and tuition waivers for qualifying members of the National Guard attending state-controlled colleges.
- **Yellow Ribbon Program** - A provision of the federal Post-9/11 Veterans Educational Assistance Act of 2008. This program allows institutions of higher learning (degree-granting institutions) in the United States to voluntarily enter into an agreement with the VA to pay tuition expenses that exceed the highest public in-state undergraduate tuition rate. The institution can contribute up to 50 percent of those expenses, and the VA will match the same amount as the institution.

Entrepreneurship Services

The committee received information on entrepreneurship services available to North Dakota veterans, including:

- **Entrepreneurship Bootcamp for Veterans with Disabilities (EBV)** - a program offering training in entrepreneurship and small business management to post 9-11 veterans with disabilities resulting from service to the country. The EBV is designed to open the door to business ownership for veterans by developing skills associated with launching and growing a small business and helping leverage programs and services for veterans and people with disabilities.
- **United States Small Business Administration (SBA)** - The federal agency aids, counsels, assists, and protects the interests of small business concerns, to preserve free competitive enterprise, and to maintain and strengthen the overall economy of the nation. The SBA helps Americans start, build, and grow businesses.
- **Procurement technical assistance program (PTAP)** - A program providing matching funds through cooperative agreements with state and local governments and nonprofit organizations for the establishment of Procurement Technical Assistance Centers to provide procurement assistance. Procurement Technical Assistance Centers are primarily focused on helping existing companies secure government contracts by working with veteran and service-disabled veteran entrepreneurs to position their companies to successfully compete in the government contracting arena.
- **Entrepreneurship training** - A program allowing eligible servicemembers and veterans to use VA education benefits to take courses offered by the Small Business Development Centers or the National Veterans Business Development Corporation, better known as "The Veterans Corporation."

Mental Health Services

The committee received information on mental health services available to North Dakota veterans, including:

- **Veterans Health Administration Mental Health Strategic Healthcare Group** - The federal agency provides general inpatient psychiatric services at 132 medical centers as well as mental health outpatient services in

689 medical centers and community-based outpatient clinics. In addition, readjustment counseling services are available for veterans and their families at 209 veterans' centers across the nation. Mental health services are available in primary care clinics, VA nursing homes, and residential care facilities where veterans receive health care. Veterans with a serious mental illness may receive services at facilities and clinics where specialized programs, such as mental health intensive case management, day centers, work programs, and psychosocial rehabilitation, are provided.

- **Service dog training program** - A program established by the 2013 Legislative Assembly to train service dogs to assist North Dakota veterans with posttraumatic stress disorder (PTSD). The 2013 Legislative Assembly appropriated $50,000 from the general fund to the NDVA for the service dog training program. The NDVA was required, pursuant to Section 2 of Senate Bill No. 2344, to provide a report to the Legislative Management (Government Services Committee) during the 2013-14 interim regarding the status of the service dog training program, including benefits to veterans, number of applicants, and number of service dogs provided. The committee learned the program has been well received by veterans, and several veterans have submitted an application to receive a service dog. The NDVA is working with Service Dogs for America to implement a service dog training program to provide PTSD service dogs. Service Dogs for America has 10 dogs ready for placement in North Dakota. The average cost to train each service dog is approximately $20,000. Service Dogs for America is working with prisons in North Dakota and South Dakota to assist in training of the dogs to limit the training costs.

Other State Benefits for Veterans

The committee received information on other benefits provided by the state for veterans, including:

- **Property tax exemptions/reductions** - Certain qualified disabled veterans may be eligible for property tax exemptions or property tax reductions, which also apply to the unremarried surviving spouse of a qualified deceased veteran. Pursuant to Section 57-02-08(20), the first $120,000 of true and full value of property owned and occupied as a homestead by certain qualified disabled veterans or their unremarried surviving spouse may be eligible for an exemption from property tax. In addition, Section 57-02-08.8 provides certain qualified disabled veterans or their unremarried surviving spouse is eligible for a credit applied against the first $6,750 of taxable valuation ($150,000 of true and full value) of the fixtures, buildings, and improvements of the homestead owned and occupied by the disabled veteran or unremarried surviving spouse equal to the percentage of the disabled veteran's disability compensation rating for service-connected disabilities as certified by NDVA for the purpose of applying for a property tax exemption.

- **Agent Orange** - The Legislative Assembly in 2013 House Bill No. 1405 provided $50,000 from the general fund to NDVA for grants to identify and provide services to North Dakota veterans who were exposed to Agent Orange. The department was required to provide a report to the Budget Section during the 2013-14 interim regarding any funds received to provide services to veterans exposed to Agent Orange; the status of the grant program, including information on the use of the grants awarded; and outcomes of the services provided. The committee learned the department has placed billboards in Fargo and on Interstate 94 near Steele to advertise the Agent Orange grant program. The committee also learned local VFW clubs are publicizing and holding meetings regarding the Agent Orange grant program.

- **Veterans' preference -** Job reinstatement and veterans' preference in public employment provided in Chapter 37-19.1.

- **Veterans' adjusted compensation (bonuses)** - Chapter 37-28 provides for adjusted compensation payments to members of the North Dakota National Guard, and North Dakota residents of the reserve and active duty component, who were mobilized after December 5, 1992, in support of military operations around the world.

- **Park fees reductions** - North Dakota veterans with a 100 percent, service-related disability and former prisoners of war are eligible for a free annual permit to North Dakota state parks. All other North Dakota veterans with service-related disabilities are eligible to receive an annual permit for $20. The Golden Access Passport is issued by the Army Corps of Engineers to any individual who has been medically determined to be blind or permanently disabled for purposes of receiving benefits under federal law, including admission to federal parks.

- **Aircraft excise tax exemption** - Under Section 57-40.5-03(1), an aircraft acquired by a disabled veteran is exempt from aircraft excise tax.

- **Motor vehicle excise tax exemption** - Under Section 57-40.3-04(1), any motor vehicle acquired by, or leased and in the possession of, a resident disabled veteran who registers, or is eligible to register, the vehicle with a distinctive license plate is exempt from motor vehicle excise taxes. A surviving spouse who has not remarried and is receiving NDVA dependency and indemnity compensation retains the exemption of the deceased qualifying veteran.

- **Veteran's indicator on North Dakota driver's license** - Veterans can request to have an indicator on their North Dakota driver's license to show they are veterans of United States military service.
- **Reduced fees for licenses** - Section 20.1-03-12 provides a Game and Fish Department resident fishing license for a disabled veteran who has a 50 percent service-related disability is $5 instead of $16, and the combined general game, habitat stamp, small game, and fur-bearer license for a resident disabled veteran is $3 instead of $50.
- **Injured military deer licenses** - Section 20.1-02-04 provides the Game and Fish Department issue free of charge four any deer licenses and six any white-tailed deer licenses annually to the Injured Military Wildlife Project of North Dakota.
- **North Dakota Veterans' Cemetery** - Veterans may be buried in the North Dakota Veterans' Cemetery at no charge. A fee is charged for a spouse or eligible dependent buried on the same plot at the cemetery.

Statutory Definitions of Veteran

The committee received information on the definition of "veteran" used for North Dakota veterans' programs. The committee learned that Century Code contains a number of definitions of veteran, each used for a specific purpose or for determining eligibility for a certain program. The committee learned that because of the various definitions, a veteran eligible for one state program may not be eligible for another state program. The committee reviewed the following sections of Century Code defining veteran for the North Dakota veterans' programs.

- Section 37-14-01.1 - Veterans' aid fund loan program and veterans' postwar trust fund
- Section 37-01-40(1) - Dependent tuition waiver and Veterans' Home
- Section 57-40.5-03(1) - Aircraft excise tax exemption
- Section 57-40.3-04(1) - Motor vehicle excise tax
- Section 57-02-08(20) - Property tax exemption for disabled veterans
- Section 57-02-08.8 - Property tax credit for disabled veterans
- Section 37-01-40(2) - Veterans' preference
- Section 37-28-02(7)(b) - Veterans' adjusted compensation (bonuses)
- Section 20.1-03-12(6) - Game and Fish reduced fees and licenses

Income Tax Exemptions for Veterans' Retirement Compensation

The committee received information on income tax exemptions in other states for veterans' retirement compensation. The committee learned 8 states, including North Dakota, do not provide any income tax exemption relating to veterans' retirement compensation. Of the 42 states which provide an exemption for veterans' retirement compensation, 7 states do not collect personal income tax, 15 states exempt 100 percent of the retirement compensation, 1 state exempts 100 percent of retirement compensation if the veteran received the congressional medal of honor, 13 states have a maximum allowable exemption amount, and 3 states use a combination of a maximum amount and a percentage to determine the exemption amount.

The committee learned the 2013 Legislative Assembly considered, but did not approve House Bill No. 1254, which would have exempted military retirement pay from the state income tax. The fiscal note on the bill indicated that if approved, the bill would have reduced general fund revenue by an estimated of $4,050,000 for the 2013-15 biennium.

Record of All North Dakota Veterans

Pursuant to Section 1 of Senate Bill No. 2210 the Adjutant General was required to initiate and coordinate the writing, publishing, and distribution of a record of all North Dakota veterans, including a record of all North Dakotans killed in action and missing in action since statehood. The Adjutant General was also required to determine the projected costs for the completion of the writing, publishing, and distribution of the records and present those projections to the Legislative Management. The 2013 Legislative Assembly appropriated $50,000 from the general fund to the Adjutant General for this purpose.

The Deputy Adjutant General informed the committee the $50,000 appropriated by the 2013 Legislative Assembly will not be adequate to complete the project, and the Adjutant General would need authority to accept funds from sponsors or donors for the book if the Legislative Assembly determines the project should be completed using private donations. The Deputy Adjutant General informed the committee that while the Adjutant General may provide assistance, it may be more appropriate for another state agency to have primary responsibility for the writing, publishing, and distributing of a record of all North Dakota veterans.

The committee considered but did not recommend a bill draft to provide special fund appropriations to the Adjutant General for writing, publishing, and distributing a record of all North Dakota veterans.

Other Information and Testimony

The committee received the following key comments from other interested persons:

- Concern regarding the definition of veteran used under the Veteran Educational Training Program. The current definition excludes a number of nondeployed National Guard members.
- A federal report indicated that the federal VA Hospital in Fargo was not identified as having any significant scheduling issues.
- The Fargo VA Health Care System scheduled 97 percent of appointments between zero and 30 days of the reference date.
- While most veterans are receiving services on a timely basis at the federal VA Hospital in Fargo, a federal change requiring that veterans' claims be processed at a number of processing facilities around the country rather than within the veterans' home state may result in delayed claims processing for North Dakota veterans.
- Concern regarding the ending of surviving spousal benefits after remarriage, particularly the inability of the surviving spouses to receive the benefit again if the remarriage ends.
- Support for exempting military retirement pay from the state income tax.

Tour of Camp Grafton

The committee conducted a tour of Camp Grafton. The committee learned Camp Grafton has experienced growth, development, and improvements since the North Dakota National Guard received the land for its military mission. Improvements continue to be made and are designed to keep Camp Grafton relevant to its mission to support training of the North Dakota National Guard.

Recommendations

The committee recommends Senate Bill No. 2042 to exempt military retirement pay from the state income tax. The bill would be effective for taxable years beginning after December 31, 2014.

REPORT FROM THE COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES

Section 50-06.1-16 establishes the Committee on Employment of People with Disabilities and requires the committee to submit an annual report to the Legislative Management before January 1 of each year. The report must detail the committee's activities, the committee's goals, and the progress the committee has made in reaching these goals. The report must also include identification of barriers to achieve the committee's goals and must include identified strategies and policies that can help the committee realize its goals. The committee is to submit the annual report to the Governor and the Legislative Management. The Government Services Committee was assigned the responsibility to receive this report for the 2013-14 interim.

Background

The Committee on Employment of People with Disabilities consists of four members of the public appointed by the Governor and five ex officio individuals representing the Department of Commerce Division of Workforce Development, the Department of Human Services Division of Vocational Rehabilitation, the Department of Public Instruction, the Protection and Advocacy Project, and the Department of Human Services developmental disabilities programs. The committee is to collaborate, coordinate, and improve employment outcomes for working-age adults with disabilities.

Section 39-01-15 provides certain handicap parking fees are to be deposited in the employment of people with disabilities fund for use by the committee. Any fees deposited in the fund are appropriated on a continuing basis to the Department of Human Services for use by the committee in meeting its statutory duties. Approximately $12,000 of handicap parking fees are estimated to be deposited in the fund during the 2013-15 biennium. The balance of the fund on June 30, 2013, was $4,520.

Report on the Activities of the Committee on Employment of People with Disabilities

The committee learned the activities of the Committee on Employment of People with Disabilities included drafting bylaws, receiving appointments from the Governor's office, and coordinating activities with other entities involved in improving the employment outcomes for individuals with disabilities. The Committee on Employment of People with Disabilities is also building its organizational foundation and simultaneously learning about the priorities and plans of other workgroups that are promoting integrative employment.

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 2013-14 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 2013-14 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

REPORT ON PLAN TO RELOCATE THE MISSOURI RIVER CORRECTIONAL CENTER TO THE YOUTH CORRECTIONAL CENTER

Senate Bill No. 2015 (2013) provided a general fund appropriation of $200,000 to the Department of Corrections and Rehabilitation to develop, in conjunction with OMB, options for the feasibility and desirability of relocating the Missouri River Correctional Center and for a land use study. Section 4 of Senate Bill No. 2015 provides the department may use up to $50,000 of the appropriation to contract for a land use study of the current Missouri River Correctional Center site, including options to develop all or a portion of the land into a day park and options to continue agriculture activities. The land use study may not review options to develop the land for residential, commercial, or other related purposes. The section provides the department may use up to $150,000 of the appropriation for the development of options for relocating the Missouri River Correctional Center, including the:

- Determination of facilities, services, and activities that may be shared by the Missouri River Correctional Center and the Youth Correctional Center;
- Development of a plan to move the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center; and
- Determination of costs for construction necessary to relocate the Missouri River Correctional Center during the 2015-17 biennium, pending approval and funding by the 64th Legislative Assembly.

During the 2013-14 interim, OMB was to provide a report to the Budget Section regarding options for the possible relocation of the Missouri River Correctional Center and the results of the study. The Department of Corrections and Rehabilitation was to present its plan to move the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center to the Legislative Management by July 1, 2014. The Government Services Committee was assigned this responsibility for the 2013-14 interim.

Current Facilities

The committee learned the Missouri River Correctional Center site is southwest of Bismarck along the Missouri River and is comprised of heavily wooded land, pastures, irrigated agricultural land, delineated wetlands, and a floodway. The Missouri River Correctional Center contains 151 inmate beds. The facility is designed for minimum security and there is no fence around the property. The mission of the Missouri River Correctional Center is to provide a safe and healthy environment for rehabilitation. The location of the center includes approximately 985 acres of state-owned land managed by the Department of Corrections and Rehabilitation. In addition to buildings to support the center, a portion of the land is leased for agricultural purposes.

The Youth Correctional Center, located on approximately 125 acres west of Mandan, 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. The Department of Corrections and Rehabilitation also manages approximately 1,290 acres of state-owned land that is adjacent to the facility.

Missouri River Correctional Center Land Use and Planning Study

The committee received the report from the Department of Corrections and Rehabilitation regarding the Missouri River Correctional Center land use and planning study. The study found it was physically feasible but not desirable to

relocate the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center. Relocating the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center would create a significant risk associated with maintaining strict physical separation of the Missouri River Correctional Center's adult male population and the Youth Correctional Center's juvenile male and female population. Both facilities would require physical and operational changes, as well as heavy reliance on staff, to maintain this separation. The committee learned potential efficiencies gained from relocating the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center include minimal sharing of staff beyond that which already occurs, particularly in maintenance and medical staff, but sharing of facilities for educational, treatment, or security staff does not appear feasible. Project costs for a new Missouri River Correctional Center facility on the Youth Correctional Center site are estimated to be approximately $28 million.

The committee learned due to the age of the buildings, flood damage, and maintenance concerns, including mold, considerable upgrades are required for the existing Missouri River Correctional Center facility. The study did not include a review of locations other than the Youth Correctional Center site for a potential site for the Missouri River Correctional Center. The committee learned that if flood protection is established, the Missouri River Correctional Center could remain in the same location and a day park could be created, with irrigated land providing a buffer between the facility and the park.

All or a portion of the Missouri River Correctional Center land is well-suited for use as a public day park. Three potential concepts were identified to use the land as a day park, two of which require relocation of the Missouri River Correctional Center. Each concept includes a primary park building for visitors, a paved road network to access the various parts of the park, a network of trails providing visitors with options to walk, run, bike, hike, and cross-country ski, and a recreational waterway offering backwater conditions ideal for canoeing, kayaking, and beachfront swimming. The estimated cost to establish the park is between $7.1 million and $11.9 million, depending on whether all or a portion of the land is converted to a park.

HEALTH CARE REFORM REVIEW COMMITTEE

The Health Care Reform Review Committee was assigned three studies.

Section 15 of House Bill No. 1012 (2013) directed the committee to study the immediate needs and challenges of the North Dakota health care delivery system, implementing the Healthy North Dakota initiative, examining Medicaid reform, and the feasibility of developing a plan for a private health care model that will comply with federal health care reform in a manner that will provide high-quality, accessible, and affordable care for North Dakota citizens.

Section 1 of House Bill No. 1034 (2013) directed the committee to study health care reform options, including the implementation of the Affordable Care Act (ACA) if the federal law remains in effect and state alternatives for state-based health care reform if the federal law is repealed.

Section 3 of House Bill No. 1362 (2013) directed the committee to study the effects of the ACA due to the dramatically changing health care system in the state, including alternatives to the ACA and the Medicaid expansion provisions to make health care more accessible and affordable to the citizens of the state, including access, the cost of providing services, the Medicare penalty to the state's providers, and the Medicaid payment system.

Committee members were George J. Keiser (Chairman), Rick Becker, Alan Fehr, Robert Frantsvog, Eliot Glassheim, Kathy Hogan, Nancy Johnson, Jim Kasper, Alex Looysen, and Karen M. Rohr and Senators Tyler Axness, Spencer Berry, Oley Larsen, Judy Lee, Tim Mathern, and Dave Oehlke.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

BACKGROUND

Affordable Care Act

In March 2010 the President signed into law two pieces of legislation that initiated a multiyear effort to implement health care reform in the United States--the Patient Protection and Affordable Care Act (HR 3590) and the Health Care and Education Reconciliation Act of 2010 (HR 4872)--which together are referred to as the Affordable Care Act or ACA. The ACA had stated objectives of creating new structural models to increase access and affordability of health care coverage, reforming operational governance of the health insurance industry, providing consumers protection, and providing new tools for the improvement of the health care delivery system and patient outcomes.

Since enactment of the ACA, North Dakota has made several decisions regarding implementation, including whether to administer the health benefit exchange, whether to select the state's essential health benefits or instead allow the essential health benefits to be selected through the default method, and whether to participate in Medicaid Expansion. The state may have to decide whether to submit an application for a Section 1332 State Innovation Waiver (innovation waiver) to allow the state more flexibility in meeting the requirements of the ACA.

Health Benefit Exchanges

During the November 2011 special session, the Legislative Assembly did not enact legislation to provide for a state-administered health benefit exchange or to allow for state participation in a federally administered health benefit exchange. As a result the state is allowing the federal government to administer its health benefit exchange. The federally administered health benefit exchange is referred to as the federally facilitated marketplace (FFM). Guidelines issued by the United States Department of Health and Human Services (HHS) provide that states will be allowed to transition from one exchange model to another. A state may alter its exchange model in 2015 by submitting an exchange blueprint by November 18, 2013; and for 2016, the blueprint would need to be submitted by November 18, 2014.

Essential Health Benefits

Starting January 1, 2014, the ACA requires individual and small group plans to include all essential health benefits (EHBs), limit consumers' out-of-pocket costs, and meet the Bronze, Silver, Gold, and Platinum coverage level standards. However, grandfathered and self-insured plans are exempt. Large group plans are required to meet the cost-sharing limits and the benefit levels, but are not required to provide the full scope of benefits in the essential benefits package.

The HHS issued a bulletin providing 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; and
10. Pediatric services, including oral and vision care.

If a state failed to choose a benchmark plan by September 30, 2012, the default plan would be the nongrandfathered small group plan with the largest enrollment in the state, which in North Dakota at the time was the Medica Choice Passport plan. On September 28, 2012, the Insurance Commissioner submitted a selection of an essential health benefit benchmark plan to HHS, designating the Sanford Health Plan, which at the time was the largest insured commercial non-Medicaid HMO operating in the state.

The HHS has indicated this benchmark plan will apply in 2014 and 2015 and that this overall approach may be changed in 2016 and in future years based on evaluation and feedback.

Medicaid Expansion

As enacted, the ACA required all states to expand Medicaid coverage to eligible state residents with incomes below 138 percent of the federal poverty level (FPL). Failure to comply with this Medicaid expansion requirement would result in penalties. However, the June 28, 2012, ruling of the United States Supreme Court in *NFIB v. Sebelius*, found the ACA's Medicaid Expansion provision is unconstitutionally coercive on states and that this situation is remedied by limiting HHS's enforcement authority. The practical effect of the ruling is that states have the option of expanding Medicaid under the ACA. A state that does not expand Medicaid is not subject to penalties under the ACA.

Section 1 of 2013 House Bill No. 1362 directs the Department of Human Services (DHS) to expand the state's Medicaid program coverage as authorized under the ACA. The department is directed to implement the expansion by bidding through private carriers or utilizing the health benefit exchange. Section 1 of the bill has an expiration date of August 1, 2017.

Section 1332 State Innovation Waivers

Section 1332 of the ACA authorizes states to submit applications for innovation waivers. In March 2011, HHS issued proposed rules implementing the innovation waiver provision of the ACA, and in February 2012 HHS issued final rules, providing that beginning in 2017 a state may qualify for an innovation waiver to allow the state to pursue its own innovative strategies to ensure residents have access to high-quality affordable health insurance. To qualify for an innovation waiver, the state's plan must provide affordable insurance coverage to at least as many residents as the ACA and may not increase the federal deficit.

Healthy North Dakota Initiative

Governor John Hoeven launched the Healthy North Dakota initiative in 2002. The initiative has evolved into a statewide partnership of stakeholders to identify common strategies to address health issues. Through this initiative health priority areas have been identified and coalitions, committees, and focus groups have formed around each of the priority areas, including the Aging Alliance, Coordinated School Health Core Team, North Dakota Diabetes Coalition, Healthy North Dakota Breastfeeding Committee, Healthy North Dakota Early Childhood Alliance, Healthy

North Dakota Health Disparities Committee, Healthy North Dakota Healthy Eating and Physical Activity Partnership, Healthy North Dakota Workplace Wellness Committee, Immunizations Committee, North Dakota Cancer Coalition, North Dakota Injury Prevention Coalition, and North Dakota Oral Health Coalition.

Medicaid Waivers

The federal government provides four primary types of waivers and demonstration projects to allow states to test new or existing ways to deliver and pay for health care services through Medicaid and the children's health insurance program (CHIP).

1. Section 1115 research and demonstration projects - Allows states to apply for program flexibility to test new or existing approaches to financing and delivering Medicaid and CHIP. Typically, Section 1115 demonstrations are approved for a five-year period and may be renewed for an additional three years. Demonstrations must be budget-neutral to the federal government so during the course of the project federal Medicaid expenditures will not be more than federal spending without the waiver.
2. Section 1915(b) managed care waivers - Allows states to apply for waivers to provide services through managed care delivery systems or otherwise limit a person's choice of providers. Within this waiver, there are four options:
    a. Section 1915(b)(1) allows an applicant to implement a managed care delivery system that restricts the types of providers people may use to get benefits;
    b. Section 1915(b)(2) allows a county or local government to act as a choice counselor or enrollment broker to help people pick a managed care plan;
    c. Section 1915(b)(3) allows the use of savings the state gets from a managed care delivery system to provide additional services; and
    d. Section 1915(b)(4) allows a state to restrict the number or type of providers that may provide specific services, such as disease management or transportation.
3. Section 1915(c) home and community-based services waivers - Allows states to apply for waivers to provide long-term care services in home and community settings rather than in institutional settings.
4. Concurrent Sections 1915(b) and 1915(c) waivers - Allow states to apply to simultaneously implement two types of waivers to provide a continuum of services to elderly people with disabilities.

Legislative Interim Background

2011-12 Interim Health Care Reform Review Committee

During the 2011-12 interim, the interim Health Care Reform Review Committee was assigned the following three studies:

1. Monitor the impact of the ACA, rules adopted by federal agencies as a result of that legislation, and any amendments to that legislation. The committee was directed to report to the Legislative Management before a special session of the Legislative Assembly.
2. Study the impact of the ACA on the Comprehensive Health Association of North Dakota (CHAND).
3. Study the feasibility and desirability of developing a state plan that provides North Dakota citizens access to affordable coverage for health care.

In addition to the three studies, the 2011-12 interim Health Care Reform Review Committee was charged with receiving updates from the:

1. Insurance Commissioner regarding administration and enforcement of the ACA, proposed legislation for consideration at a special legislative session, and proposed legislation by October 15, 2012, for the 2013 regular session;
2. Insurance Commissioner and DHS on planning and implementing a 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; and
3. Insurance Commissioner with respect to steps taken to ensure health insurer procedures are in compliance with the ACA, 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.

The committee held six meetings before the November 2011 special session, with a primary focus of 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. The committee recommended three bills for the special session.

1. House Bill No. 1474 (2011) would have provided for a state-administered health benefit exchange. This bill failed in the House.
2. House Bill No. 1475 (2011) provided an appropriation of federal funds received by DHS for ACA-related costs of DHS and the Information Technology Department (ITD) 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 DHS economic assistance eligibility system, including 1 full-time equivalent (FTE) position for DHS and 10 FTE positions for ITD; an appropriation from the general fund and federal funds to DHS for the purpose of defraying the expenses of implementation of the ACA's Medicaid Expansion provisions, including 7 FTE positions for DHS; and an appropriation of special funds to the Insurance Commissioner for the purpose of defraying the expenses of implementation of the ACA, including 4 FTE positions. This bill passed as introduced.
3. House Bill No. 1476 (2011) amended the law relating to the external review procedures required for health insurance policies. This bill passed as amended.

Following the special session, the committee held additional meetings and the committee continued receiving regular status reports from the Insurance Commissioner and representatives of the Insurance Department regarding the federal grants that were 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 and reviewed the June 28, 2012, ruling of the United States Supreme Court in *NFIB v. Sebelius*, regarding the constitutionality of the ACA. The committee recommended House Bill No. 1034 (2013) to provide for a Legislative Management study of health care reform options, which passed and was assigned to the Health Care Reform Review Committee.

TESTIMONY

The committee organized its meetings to address all elements of its three study charges because of the commonality of issues involved in studying implementation of the ACA and North Dakota's health care delivery system.

Implementation of the Affordable Care Act

Department of Human Services Technology

Throughout the interim the committee received reports on the status of DHS modernization of its eligibility determination system and the status of the Medicaid management information system (MMIS). Because the eligibility determination system and enrollment system were not operational in time for ACA open enrollment, DHS exercised its contingency plan while the technology projects continue to be developed. The DHS awarded a contract to a vendor to operate a call center and to perform eligibility application processing.

Medicaid Expansion

Throughout the interim the committee received reports on the status of implementation of Medicaid Expansion, including the creation of the request for proposal (RFP), the bidding process, vendor selection, enrollment, and issues that arose throughout the implementation process.

In accordance with House Bill No. 1362 (2013) DHS sought a private carrier through which the state would provide Medicaid Expansion via a managed care program. The initial plan was for DHS to select two vendors. However, of the two private carriers that submitted bids and were offered contracts under the RFP, only one accepted the contract. Sanford Health Plan entered a contract with the state to provide insurance coverage for the state's Medicaid Expansion population.

The committee received information regarding the Sanford Health Plan network in the state and how Sanford Health Plan meets the Medicaid Expansion access requirements. To meet the necessary network requirements, Sanford Health Plan worked with public health units to establish in-network provider contracts. The following public health units enrolled as in-network providers:

- Central Valley Health District (Stutsman and Logan Counties);
- Custer Health (Morton and Logan Counties);
- Dickey County Health District;
- Fargo Cass Public Health;

- LaMoure County Health Department;
- Ransom County Public Health; and
- Walsh County Health District.

In addition, a representative of Sanford Health Plan reported efforts are being taken to establish contracts with the eight regional human service centers and to credential the providers within the human service centers.

The committee received testimony from pharmacists and a representative of the North Dakota Pharmacists Association that Medicaid Expansion is being administered in a manner that is unfair and unreasonable to many pharmacists in the state. Pharmacist concerns included lack of willingness to negotiate contracts with a "take-it-or-leave-it" approach to negotiation, being automatically rolled into a network without knowing it was going to be used to serve the Medicaid Expansion population, not being offered a contract to participate in serving Medicaid Expansion patients, being unable to opt out of serving Medicaid Expansion patients unless the pharmacist also drops out of the existing contract, and being offered reimbursement that does not cover the cost of doing business.

Although contracts and antitrust laws prohibited the pharmacists from discussing the specific Medicaid Expansion pharmacy reimbursement rates, the committee received testimony that the reimbursement rates under Medicaid Expansion are significantly lower than the commercial Sanford Health Plan rates and the Medicaid Expansion contract is under a different contracted network. The testimony attributed most of these issues to the fact that Sanford Health Plan contracts with the pharmacy benefits manager Express Scripts.

Pharmacists testified in support of transparency, including publication of a pharmacy fee schedule with a single set of terms and conditions for providers of Medicaid Expansion, similar to how Medicaid and Workforce Safety and Insurance do business; in support of reimbursement rates being adequate to cover the pharmacist's cost of doing business; and in support of allowing pharmacists to opt out of serving Medicaid Expansion patients.

In response to these pharmacy reimbursement issues, a group of stakeholders worked to try to resolve the issues. A representative of Sanford Health Plan testified effective August 1, 2014, Sanford Health Plan would adopt a broad network specifically for Medicaid Expansion and effective September 1, 2014, would pay sole community providers an enhanced dispensing fee. A representative of DHS testified although the pharmacy reimbursement rates for 2015 have not yet been set, the rates will be increased from the 2014 rates and there will be increased transparency.

The committee learned the Medicaid Expansion enrollment numbers have increased by approximately 1,000 enrollees per month, and this increase is expected to continue until the enrollment nears 20,000 by the end of the 2013-15 biennium.

With Medicaid Expansion, approximately 784 CHIP-enrolled children will move to Medicaid Expansion. Originally this transition from CHIP to Medicaid Expansion was expected to take place January 1, 2014. However, the state was authorized to make these transitions from CHIP to Medicaid Expansion as the CHIP renewal dates arise. Additionally, due to changes in Medicaid eligibility disregards and deductions, some children previously eligible and receiving Medicaid will not be eligible under this new formula. Approximately 3,100 children who are no longer eligible for Medicaid will be allowed to transfer to CHIP for one year. In the case of adults who are found ineligible for Medicaid due to these new eligibility standards, the adults will receive a six-month period of continued eligibility.

A representative of DHS testified that prior to ACA open enrollment, DHS elected to be what is referred to as an assessment state for applications made through the FFM. In an assessment model, the FFM does not make a final eligibility determination, but instead the FFM transmits the account to the state once the FFM has evaluated the individual and identified the applicant as Medicaid or CHIP eligible, and then the state makes the formal determination.

As of July 1, 2014, North Dakota became a determination state. In a determination model the state accepts the eligibility determinations made by the FFM. In both an assessment and determination model the FFM utilizes the same set of eligibility criteria. By choosing the determination model the state must now accept the FFM determination as final. The determination remains in place until the next period of redetermination takes place or until a change occurs in the client's circumstances. This change should alleviate some of the pressure on state and local resources required to process applications.

Medicaid Expansion Estate Recovery

North Dakota's Medicaid estate recovery law applies to individuals who are eligible for Medicaid Expansion under the modified adjusted gross income (MAGI) eligibility rules. The Centers for Medicare and Medicaid Services (CMS) has noted in a guidance letter that it "intends to thoroughly explore options and to use any available authorities to

eliminate recovery of Medicaid benefits consisting of items or services other than long-term care and related services in the case of individuals who are determined eligible for Medicaid benefits under the MAGI methodology."

A representative of DHS testified North Dakota could amend its estate recovery statutes to provide this same result. The amendments would only apply to estates for which the death occurred after the effective date of the amendments. Due to the lack of asset information available for the Medicaid Expansion recipients whose eligibility was determined under MAGI eligibility rules, it will be difficult to identify the expected estate recoveries from this population. Any exemption from estate recovery for Medicaid Expansion recipients would decrease future estate recoveries. It is possible there will be legislation introduced in 2015 to address this issue.

Medicaid Expansion and Medicaid Cost-Sharing

The committee received an overview of what federal Medicaid rules allow for cost-sharing and out-of-pocket costs. States can impose copayments, coinsurance, deductibles, and other similar charges on most Medicaid-covered benefits and the amounts that can be charged vary with income. For Medicaid enrollees with income at or below 100 percent of FPL, cost-sharing for most services is limited to nominal or minimal amounts. States have options to establish alternative out-of-pocket costs which may target certain groups of Medicaid enrollees with income above 100 percent of the FPL. Out-of-pocket costs may be higher than nominal charges depending on the type of service and cannot exceed 5 percent of the family income.

Michigan obtained approval from CMS to amend its Section 1115 Medicaid Demonstration Waiver, "Healthy Michigan," to implement Medicaid Expansion that includes an alternative cost-sharing plan for enrollees. The committee received a general comparison between North Dakota's and Michigan's Medicaid Expansion programs and a summary of North Dakota's current Medicaid copayment amounts. A representative of DHS testified North Dakota's Medicaid copayment amounts have been considered nominal and therefore it is not necessary to track household income. Limitations in DHS's current information technology system limit the ability of DHS to track the income data necessary to track in order to impose higher copayment amounts.

Coverage for Substance Abuse Treatment

Representatives of the substance abuse treatment community brought to the attention of the committee several concerns regarding changes taking place in the state which negatively impact substance abuse treatment, including:

1. Concern whether Medicaid Expansion will adequately provide substance abuse services and whether the network of providers will be adequate.
2. Concern the state's EHB benchmark plan provides for less comprehensive substance abuse coverage than many pre-ACA plans, and as a result, all health insurance plans in the state are significantly cutting benefits in all plans to match this benchmark coverage.
3. The mental health and addiction services provider network will be stretched due to more people being insured under the ACA and Medicaid Expansion and due to population growth in rural areas resulting from oil development.

A representative of the Insurance Department testified that in comparing the EHB benchmark plans, the Blue Cross Blue Shield of North Dakota (BCBSND) plans had the richest coverage for addiction services. Current reports from the federal government indicate 2016 will be the first opportunity for states to change their EHB selection. Until 2016, if a state changes its EHB, the state may be financially liable for costs associated with increasing the state's EHB.

Other factors surrounding the issue of substance abuse coverage include an outstanding request for an Attorney General opinion on the issue of interpreting the state and federal mandates for substance abuse coverage, the Insurance Department has an ongoing market conduct examination being conducted which addresses the issue of substance abuse coverage, the federal Mental Health Parity and Addiction Equity Act of 2008 rules became effective July 1, 2014, and will be recognized as plans are renewed, and the interim Human Services Committee was charged with studying behavioral health needs and that committee was addressing some of the elements related to these concerns.

A representative of Sanford Health Plan testified that effective July 1, 2014, with the exception of grandfathered plans and small group plans, all health insurance plans are required to provide parity between physical health coverage and mental health and substance abuse treatment coverage. As part of this federal law, the definition of what qualifies as residential treatment has been clearly defined. The bottom line is that insurance policies will be required to cover residential treatment. Additionally, effective January 1, 2015, Medicaid Expansion will include coverage of residential treatment for mental health and substance abuse treatment.

As part of the committee discussion regarding EHB and substance abuse treatment, the committee received a report on the activities of the interim Human Services Committee and the activities and recommendations of the Behavioral Health Stakeholders Group.

Insurance Department - Rate Filing

A representative of the Insurance Department testified the department abides by the following in performing rate review and form review for health insurance policies:

1. Rate review:
   a. For products offered outside the FFM only, the Insurance Department will perform the rate review.
   b. For products offered inside and outside the FFM, the Insurance Department will perform its review based on the outside plan filing and submit that approval through the system for electronic rate and form filing (SERFF).
   c. For products offered inside the FFM only, the Insurance Department will not perform rate review.
2. Form review:
   a. For projects offered outside the FFM only, the Insurance Department will perform the review, including review for state and federal requirements.
   b. For products offered inside and outside the FFM, the Insurance Department will accept a checklist attestation for federal reforms and review the filings for compliance with North Dakota statutory and regulatory requirements.
   c. For products offered inside the FFM only, the Insurance Department will accept a checklist attestation for federal reforms and review all North Dakota statutory and regulatory requirements.

Discontinuation of Health Insurance Policies

When the ACA was passed, a statement was made "if you like your plan, you can keep it." However, as implemented, consumers were informed some individual and group policies did not meet the necessary requirements of the ACA, and those policies would be discontinued. However, in response to the negative response to this policy, the federal government allowed states to decide whether to let these policies continue as transitional policies for another year--this period of time was later extended to two years. In North Dakota, the Insurance Commissioner left it to the insurance companies to decide whether to continue these policies as transitional policies.

- BCBSND declined to continue both its group and individual policies, and reported approximately 31,600 members received discontinuation notices--which is equal to approximately 8 percent of the 400,000 North Dakotans served by BCBSND;
- Medica declined to allow transitional plans in the group market, but did offer transitional plans in the individual market. Approximately 3,173 members in the individual market were allowed to stay in their transitional plans.
- Sanford Health Plan allowed transitional plans in both the group and individual markets. In the individual market, approximately 540 members were allowed to stay in their transitional plans, and in the group market, approximately 1,823 members were allowed to stay in their transitional plans.

Federally Facilitated Marketplace Enrollment

Through the course of the interim the committee received updates from the Insurance Commissioner, representatives of the Insurance Department, and representatives of insurers on the status of enrollment under the FFM, including enrollment figures. The 2014 open enrollment period was October 1, 2013, through March 31, 2014. The 2015 open enrollment will run November 15, 2014, through February 15, 2015. In 2014 the tax penalty for not having health insurance is the greater of $95 or 1 percent of yearly household taxable income. In 2015 the tax penalty will be the greater of $325 or 2 percent of income.

The committee received information regarding the 2015 reenrollment process. Under the reenrollment process recently announced by the federal government, policyholders in the FFM who receive subsidies will receive up to three notices from the FFM informing them how to update their information for the next year. Policyholders will also receive a notice from their insurance carriers outlining new premium rates, the amount they are eligible to save on their monthly premium through tax credits and cost-sharing reductions, and the ability to switch plans if they choose. Representatives of the Insurance Department and insurers voiced concern that these multiple notices may be confusing to customers.

Other States

Throughout the committee's study and review of implementation of the ACA, the committee received information regarding how other states have addressed similar matters and references to receipt of information regarding other states are included throughout in this report. However, the committee did receive a computer presentation from a representative of the Blue Cross Blue Shield Association which specifically provided a high-level overview of the ACA--past, present, and future. The presentation included information regarding:

- How other states have fared in implementing the ACA, including enrollment;
- State successes and failures in accomplishing the goals of the ACA;
- Partisan perception of the ACA;
- Leading reasons why the uninsured have not purchased health care;
- Challenges to health insurance affordability, such as rising prices of medical services, increased utilization of services, a delivery system that rewards volume, taxes and fees, and how uncertainty effects affordability;
- How rate stabilization protects consumers;
- The objectives for, explanation of, and funding for risk adjustment, reinsurance, and risk corridors; and
- Identifying practical realities, such as allowing the market time to adjust and considering whether regulation is leveling the playing field, impeding innovation, or limiting choice.

The committee received testimony that although all of the state-administered health benefit exchanges are experiencing challenges, Kentucky and Connecticut have state-administered exchanges that are doing well, as are the state-administered exchanges in California, New York, and Rhode Island. However, it was reported Oregon's state-administered exchange is experiencing significant problems. Almost universally, one of the biggest challenges being faced by state-administered exchanges is how best to mesh the new exchanges with the existing Medicaid information technology systems. There was a general underestimation of the information technology complexity related to creating and administering these exchanges. The single most important factor in determining whether a state would be successful in creating and administering a state-administered exchange is whether that state set reasonable expectations. In the case of Kentucky and Connecticut, they stuck to the basics when creating the plan, with the expectation they would build additional features into the exchanges over time. The states that have struggled seem to have taken on too much all at one time.

Generally, Medicaid Expansion enrollment through the exchanges is meeting the states' expectations. However, as it relates to Medicaid Expansion, the states have experienced some administrative, operational, and governance challenges. Some of these problems are resulting because the state agencies that administer the Medicaid Expansion programs are not very familiar with the private insurance market.

Insurer Panel Discussions

The committee held multiple panel discussions of insurers and received a broad range of timely information regarding ACA implementation. Topics addressed over the course of the interim include:

- Grandfather status plans;
- Provisions of the ACA unique to members of federally recognized Indian tribes;
- Tobacco use as a rating factor;
- The small business health options program (SHOP);
- How premium subsidies work;
- Employer requirements;
- Health care cost drivers and how to mitigate these cost drivers;
- Challenges related to data transfer under the FFM;
- Emerging trends in health care costs;
- How social changes and education related to the ACA may impact future enrollment;
- Steps insurers are taking to increase use of agents;
- Special enrollment periods and verification of qualifying events;
- Nonpayment, delinquency, and termination of policies; and
- Reenrollment processes and notices.

Employers

The committee received information regarding the choices faced by a North Dakota small business when selecting a group health insurance plan. The information compared and contrasted the business's existing grandfathered health plan to a comparable metallic plan under the ACA.

- The grandfathered plan experienced a 22 percent increase in premium from last year to the current year of which the insurer attributed 2 to 2.25 percent to the ACA;
- Under the metallic plan, larger families and tobacco users experienced a large increase in premium; and
- As it relates to experience, there are winners and losers under both plans.

The committee received information presented by a representative of Eide Bailly LLP regarding ACA implementation issues being faced by employers, including penalties large employers will face if the employers do not offer employees affordable health insurance, employer reporting requirements, and excise taxes for "Cadillac" health plans.

CHAND

The committee received an update on status of the CHAND plan, how the plan has been impacted by the ACA, and whether the implementation of the ACA will necessitate any changes to the CHAND program.

The committee received an overview of the multiple ways an applicant may qualify for health insurance coverage through the CHAND program. The implementation of the ACA has effectively eliminated new enrollment in the traditional CHAND plans that are designed to cover applicants who are denied traditional health insurance coverage. Additionally, Medicaid Expansion has attracted a handful of CHAND subscribers. However, CHAND has already received requests to return to the program, primarily due to provider network restrictions. Overall, with the implementation of the ACA, CHAND has realized a small drop in enrollment.

The committee received testimony in support of retaining the CHAND program. With the implementation of the ACA, several states discontinued their high-risk pools. However, some of these states are now trying to reinstate their high-risk pools.

Public Employees Retirement System Uniform Group Insurance Plan

The committee received a report on the status of the Public Employees Retirement System (PERS) uniform group insurance plan. A representative of BCBSND reported the state should be eligible to retain the plan's grandfathered status under the ACA if the following conditions continue to be met:

- Benefits are not significantly cut or reduced;
- Decreases in employer contribution to premium are limited to reductions of no more than 5 percent below the contribution rate on March 23, 2010;
- Coinsurance percentages are not increased;
- Increases in copayments are not more than the greater of $5 or cumulative medical inflation plus 15 percent based March 23, 2010, rates; and
- Increases in deductible and out-of-pocket maximums are not more than cumulative medical inflation plus 15 percent based on March 23, 2010, rates.

Enrollment Assistance

Throughout the interim the committee received status reports on ACA enrollment assistance services being offered in the state to assist members of the public in enrolling for coverage. In states with FFMs, CMS awarded grants to entities to provide navigator services. The grant awards and recipients for 2013-14 and 2014-15 are:

Recipient	2013-14 Award Amount	2014-15 Award Amount
Great Plains Tribal Chairman's Health Board*	$186,000**	$148,659**
North Dakota Center for Persons with Disabilities	$414,000	$451,342

*Recipient offers navigator services in North Dakota and South Dakota.

**Award amount reflects the portion of the award attributable to services provided in North Dakota.

In addition to the navigator grants awarded by CMS, the Health Services Resources Administration (HRSA) provided funding to community health centers (CHCs) to conduct ACA outreach and education and to provide enrollment assistance through certified application counselors (CACs). Community HealthCare Association of the

Dakotas (CHAD) received funding from HRSA and used this funding to provide education and outreach and for hiring CACs.

Besides the different funding sources, the primary differences between navigators and CACs include navigators conduct outreach, education, and one-on-one assistance and CACs do not provide the outreach and education services and navigators receive more training than CACs. In addition to navigators and CACs, agents and brokers are able to complete certification to qualify to participate in the FFM. The Insurance Department website includes a list of certified North Dakota agents and brokers.

Quality Improvement

The committee received a presentation from a representative of North Dakota Health Care Review, Inc., on the past, current, and future status of health care quality improvement efforts in the state. North Dakota Health Care Review, Inc., is the CMS-designated Medicare quality improvement organization for North Dakota.

The committee learned that in 2004-05, the federal Medicare Modernization Act and Deficit Reduction Act initiated quality data reporting for hospitals, pay for performance reporting, transparency through Hospital Compare, and development of pay-for-performance strategy. In 2009 the ACA added to these efforts by including a continued focus on improving quality and safety, transparency, and partnership for patients, and value-based purchasing for hospitals, hospice, acute long-term care hospitals, rehabilitation hospitals, and others.

The committee received an overview of the hospital value-based purchasing program (VBP). The VBP is a Medicare payment strategy that rewards quality versus volume alone. The current VBP impacts six prospective payment system (PPS) acute care hospitals in North Dakota. The program is required to be budget-neutral and is funded by a 1 percent withholding from PPS hospital diagnosis-related group (DRG) payments. Under VBP, hospitals are evaluated on two domains--clinical processes (70 percent of the score) and patient experience (30 percent of the score). If a hospital performs better than the national average it will earn back all of the 1 percent withholding and more, and if the hospital performs under the national average it will earn back less than the 1 percent withholding. The withholding portion increases incrementally each year to 2 percent by 2017.

The committee received an overview of the hospital readmission reduction program. The program began with fiscal year 2012 PPS hospital discharges. The hospital's score is based on risk-adjusted, 30-day readmission rates for acute myocardial infarction, heart failure, and pneumonia. Hospitals lose a portion of DRG base payment for risk-adjusted rates higher than the national average--1 percent in 2013 and 2 percent in 2014. In 2015 added conditions will include chronic obstructive pulmonary disease and hip and knee surgeries.

The committee received an overview of the ACA reporting, transparency, and VBP programs and how these programs are or will be affecting critical access hospitals, nursing homes, physicians, home health, hospice, acute long-term care hospitals, rehabilitation hospitals, and others. The committee received an overview of ongoing quality improvement and safety initiatives that encourage improvement and help prepare providers for the VBP programs.

Section 1332 Waiver for State Innovation

The committee received a presentation from a representative of the National Association of Insurance Commissioners (NAIC) regarding the ACA's Section 1332 Waiver for State Innovation. The committee reviewed what ACA provisions the innovation waiver allows states to waive. The list of provisions a state may waive contains most of the legislation's major building blocks--exchanges, mandates, and subsidies--and therefore creates an opportunity for states to radically reshape the ACA's structure. However, there are important limitations that must also be noted. None of the ACA's amendments to the federal Public Health Service Act (PHSA), which contain the vast majority of new standards that now apply to new health insurance coverage, may be waived under an innovation waiver. Consequently, all newly sold health insurance coverage will still have to comply with these provisions.

To qualify for an innovation waiver a state must demonstrate its proposal will meet four requirements:

1. Coverage will be at least as comprehensive as the EHBs (the "comprehensive coverage requirement");
2. Coverage and cost-sharing protections against excessive out-of-pocket spending will be at least as affordable as the provisions of Title I of the ACA (the "affordability requirement");
3. The plan will cover at least a comparable number of residents as Title I of the ACA (the "scope of coverage requirement"); and
4. The plan will not increase the federal deficit (the "federal deficit requirement").

States will be required to submit extensive supporting documentation that innovation waiver proposals will meet these requirements, including actuarial analyses and certifications, data, and assumptions that will allow the

appropriate federal agencies to determine whether a state's plan will meet these requirements. Additionally, state plans must be certified by the Office of the Actuary at CMS as providing coverage that will be at least as comprehensive as the EHBs based upon data from the state and other comparable states.

A complete application must include the following:

- A comprehensive description of the state legislation and program to implement the plan;
- A copy of enacted state legislation authorizing the innovation waiver request (if a state already has a law in place allowing the plan to be implemented new legislation is not necessary);
- A list of provisions of the ACA that the state seeks to waive, with the reason for each specific request, analyses, actuarial certifications, data, assumptions, analysis, targets, and other supporting information:

  Actuarial analyses and certifications to demonstrate compliance with the comprehensive coverage, affordability, and scope of coverage requirements;

  Economic analyses to demonstrate compliance with the four coverage requirements;

  A detailed 10-year budget plan that is deficit-neutral to the federal government, considering all costs, including administrative costs, to the federal government;

  A detailed analysis regarding the estimated impact of the innovation waiver on health insurance coverage in the state; and

  Data and assumptions used to demonstrate compliance with requirements for innovation waivers;
- A detailed draft timeline for the state's implementation of the proposed innovation waiver;
- Explanations of:

  Whether the innovation waiver increases or decreases administrative burdens on individuals, insurers, and employers;

  How the innovation waiver will affect implementation of other provisions of the ACA in the state;

  How the innovation waiver will affect residents seeking health care services out of state;

  How the state will provide the federal government with all information necessary to administer the innovation waiver at the federal level; and

  How the proposal will address potential compliance, waste, fraud, and abuse committed by individuals, employers, insurers, or health care providers;
- Quarterly, annual, and cumulative targets for the comprehensive coverage, affordability, scope of coverage, and federal deficit requirements; and
- Written evidence the state has provided public notice and a meaningful opportunity to comment, including through public hearings convened by the state and separate consultations with federally recognized Indian tribes within the state's borders, as well as a summary of major issues raised by commenters.

The federal government will perform periodic reviews of the implementation of any approved innovation waivers and states must hold a public forum within six months of the implementation date of an innovation waiver, followed by annual forums thereafter. In addition, states will be required to submit quarterly reports detailing any ongoing operational challenges associated with innovation waiver implementation, any plans to overcome those challenges, and the outcomes of those actions. Annual reports must be submitted to the federal agencies each year document progress of the innovation waiver implementation process; compliance with the comprehensive coverage, affordability, scope of coverage, and federal deficit requirements; a summary of the annual public forum and all comments received at that forum; and any other information required under the terms and conditions of the state's approved innovation waiver.

The Chairman made repeated attempts to contact a representative of CMS to discuss the North Dakota's opportunities and possible timelines to apply for an innovation waiver and CMS was unable to provide detailed information.

North Dakota's Health Care Delivery System

Workforce Demographics

As an introduction to the state's demographic data, the committee received a report from a representative of the North Dakota Census Office. The report addressed population projections, population estimates since the

2010 decennial census, changes in age groups and gender balance, migration, select economic statistics, and health insurance data.

Following up on this general demographic data, the committee received a report from a representative of the Labor Market Information Center of Job Service North Dakota of online job openings in the state in health care-related occupations and received a report from a representative of the University of North Dakota School of Medicine and Health Sciences (School of Medicine) on the most recent health care workforce demand assessment.

The committee reviewed the report *2010 Snapshot of North Dakota's Health Care Workforce*, prepared for the School of Medicine, which addresses workforce needs for multiple professions, including dentists, dental hygienists, chiropractors, optometrists, psychologists, social workers, physical therapy assistants, occupational therapy assistants, dieticians, respiratory therapists, emergency medical technicians, medical and clinical laboratory technologists, medical and clinical laboratory technicians, pharmacists, and pharmacy technicians. The publication reports:

- Several professions have more providers statewide than the national average; however, maldistribution of providers has resulted in many rural counties being without adequate access to health care services. In some cases more providers are needed in North Dakota as compared to the nation due to an aging population and provision of care across rural areas. Programs designed to increase awareness about rural practice for students and graduating providers to increase recruitment along with supportive programs for providers located in the rural areas can help recruit and retain providers in these areas.
- Other providers that have more than the national average are mostly distributed throughout the state with only a few counties with an inadequate supply of providers and low vacancy rates. These professions could be examined more closely to determine what strategies have been utilized to ensure this supply.
- For many health professions, several counties have zero providers. Future studies should examine the regionalization of services, including determining secondary and outreach sites in order to determine where gaps exist at the community level. Once gaps are determined, efforts for network organizations to share providers or services could ensure access to these services. In addition, telehealth could be expanded to provide these services to very rural communities.
- Many professions are dominated by particular gender. To increase the potential workforce and greater provider diversity, efforts should be increased to encourage males and females into the wide array of health care occupations in North Dakota.
- Several professions include many providers who will potentially retire within the next 10 years. Efforts to encourage more providers into these fields, retain them in North Dakota, and provide support throughout their career should be increased. In addition, providers nearing retirement age could become engaged in mentoring, teaching, planning, and other alternative roles which may help retain them in the workforce longer.
- Several professions have salaries that are below the national rate. To increase North Dakota's ability to recruit and retain these providers, mechanisms to potentially increase salaries should be explored, including reimbursement rates and tax incentives.

The committee reviewed the report *Spotlight on the Past and Looking Forward to the Future of Nursing in North Dakota, January 2013*, prepared for the North Dakota Center for Nursing, which recommends:

- K-12 Pipeline - There are currently many programs and activities that target students in K-12 to increase their awareness of health careers and in nursing in particular and interest in nursing careers has been sustained over a number of years. However, about one-fifth of students are undecided about their future careers. This pool of students would benefit from targeted hands-on activities, including high-fidelity human patient simulation and activities to bring a greater awareness of the wide scope of the nursing profession. The North Dakota Center for Nursing is working to link targeted partners to provide these opportunities and resources to students.
- Higher Education - North Dakota has a wide cadre of established nursing programs that utilize clinical sites across many areas. However, 17 counties currently have no clinical sites. These are largely rural counties. The North Dakota Center for Nursing is working to determine clinical placement gaps and to work with nursing programs and employers to facilitate additional clinical placements. Although licensed practical nurse (LPN) programs include about one-fifth minority students, other nursing programs have few minority or male students. Great efforts to increase diversity in nursing education programs are needed. This is also a concern with nursing faculty as there are very few male or minority nursing faculty. The North Dakota Center for Nursing is working to collaborate with several existing grant-funded programs that are targeting increasing diversity. The North Dakota Center for Nursing is also working on developing cultural competence training for faculty. Few current students and nurses are interested in becoming faculty members. In addition, few nurses have climbed the career ladder and obtained further education. Efforts need to be increased to create seamless career

ladders among North Dakota's nursing education programs. The North Dakota Center for Nursing is also working to develop faculty recruitment and mentoring programs to help increase the future faculty pool.

- Nursing Supply and Demand - While North Dakota has a good supply of registered nurses and advanced practice registered nurses there is a misdistribution, with some rural areas without an adequate supply of registered nurses. In addition, with the implementation of the ACA it is anticipated that registered nurses will be utilized in greater care coordination roles and advanced practice registered nurses utilized to fill in areas with physician shortages. The North Dakota Center for Nursing is working to provide a career center along with support to health care facilities to increase retention of new graduates across urban and rural settings. North Dakota currently has a good supply of LPNs with some maldistribution. However, projections indicate that the slow growth of LPN supply over the last several years will not be adequate for future projected demand. Efforts to increase the pool of LPNs and to retain current LPNs are needed. The North Dakota Center for Nursing is working to establish regional LPN interest groups to establish opportunities for education, networking, and support that are currently nonexistent.

The committee reviewed data on advanced practice registered nurses in North Dakota, as well as information regarding recent legislative steps that have been taken to help more fully utilize advanced practice registered nurses within their scope of practice.

Workforce Programs

In addition to receiving data on health care workforce supply and demand, the committee received information regarding existing programs and activities addressing health care workforce needs, including information regarding North Dakota's Area Health Education Center (AHEC) centers with offices located in Mayville, Hettinger, and Beulah. The AHEC centers work closely with the School of Medicine's Center for Rural Health and other statewide partners to address workforce pipeline issues, including:

- Working directly, at no cost, to support and assist with recruitment of primary care and other health professionals to rural health care facilities (short term).
- Improving the number of health profession students who participate in rural community-based learning experiences and increasing the number of rural locations.
- Supporting and retaining the current workforce through programs like the Community Apgar Project, which focuses on identifying challenges and benefits to recruiting and retaining primary care providers to rural communities (short term).
- Rural-collaborative opportunities for occupational learning (R-COOL) health scrubs camps and health academies. The camps are one-day events conducted in rural communities to introduce local students to a variety of health careers through hands-on interactive activities conducted by local health professionals. The academies are on-campus events which target middle school and high school students interested in health careers (long term).

Health Professional Loan Repayment Programs

The state's loan repayment programs are state-financed and state-administered programs designed to attract physicians, nurse practitioners, physician assistants, and dentists to practice in areas of need. The committee received overviews of the following state loan repayment programs:

- State community matching physician loan repayment program (North Dakota Century Code Chapter 43-17.2), created in 1991;
- State medical personnel loan repayment program (Chapter 43-12.2), created in 1993;
- Dentists' loan repayment program (Chapter 43-28.1), created in 2001; and
- Dental nonprofit public health program (Chapter 43-28.1), created in 2009.

The criteria for the programs is not uniform from program to program. The funding amount as well as the funding sources for the state programs also vary from program to program. In addition to the state programs, there are federal loan repayment programs for which graduates may qualify. Again, the criteria for the federal programs differ from the state criteria.

The committee members discussed the importance of evaluating the programs to make sure they are accomplishing the intended goals and that they work well together and with federal programs.

School of Medicine

The committee received reports presented by the Dean of the School of Medicine addressing:

- The current status of provider supply of physicians, psychologists, nurses, pharmacists, pharmacy technicians, physical therapists, and dentists;
- The impact of changing North Dakota demographics on future health care needs;
- The possible impact of implementation of the ACA, using the Massachusetts experience as a model;
- Special health care delivery challenges in North Dakota; and
- What the School of Medicine is doing to meet North Dakota's health care needs.

The committee was informed there is a mild to moderate shortage of primary care providers, general surgeons, pediatricians, OB-GYNs, and especially dentists; there is an adequate number of mental health workers, compared with United States averages; and the largest provider supply challenge in North Dakota is maldistribution of providers, rather than a major shortage.

The combination of an aged and aging population along with population growth means North Dakota's health care workforce needs are going to get much larger. Even as the health care workforce is expanded, particular attention will be needed to ensure an adequate distribution of providers throughout all of North Dakota.

Using the Massachusetts experience as a model, the impact of the ACA may mean better insurance coverage will be achieved, there may be a substantial increase in Medicaid participation, and cost containment may continue to be a challenge.

Special health care delivery challenges in North Dakota were identified as:

- Maldistribution of providers;
- Elderly rural population;
- Geriatric care in general;
- Mental and behavioral health;
- Rural emergency medical services;
- Dental and oral health; and
- Itinerant workers and trauma care issues.

The School of Medicine's Health Care Workforce Initiative has the goals of:

- Reducing disease burden through a master of public health program and by further programming approaches under study to address mental and behavioral health issues in the state;
- Retaining more of our graduates, through pipeline activities, a revised medical school admission process, and a RuralMed program to reduce medical student debt;
- Training more graduates by expanding class sizes--medical student classes increased by 16 students per year, health sciences students increased by 30 students per year, and resident slots increased by 17 residents per year; and
- Improving the efficiency of our health care delivery system by training interprofessional education emphasizing value of clinical teams in care management and a geriatrics training program to help clinicians across the state better manage seniors and their chronic diseases.

The committee received a report of the preliminary School of Medicine's Advisory Council's biennial workforce survey. The final report will be entitled *Third Biennial Report: Health Issues for the State of North Dakota 2015* and will be published December 2014.

Coordinated Care

The committee received an overview of the BCBSND MediQHome program, which is BCBSND's version of a program for a patient-centered medical home or coordinated care model. Blue Cross Blue Shield of North Dakota began the MediQHome pilot project in 2005, expanded the pilot project in 2007, and in 2009 expanded the program statewide. The overview provided included data to help illustrate why BCBSND is pursuing this program.

The components of a medical home model include:

- Team based approach to care - No longer dependent on face-to-face visits for care and revenue and all practice staff have responsibility for care management;
- Care management - Disease registries are used to ensure timely chronic care and preventive services and patients are able to access services with shorter waiting times;
- Care coordination - Care is organized across all elements of the broader health care system; and
- Enabled technology - Using information technology to improve patient care and use of reporting of quality and patient experience measures.

The MediQHome program currently has the following suites:

- Asthma;
- Attention deficit hyperactivity disorder;
- Congestive heart failure;
- Coronary artery disease;
- Diabetes;
- Hypertension;
- Breast cancer screening;
- Colon cancer screening;
- Cervical cancer screening;
- Tobacco use assessment;
- Immunizations; and
- Vitals.

Under the MediQHome program, a physician will spend approximately one-third of the time providing face-to-face care, which may include videoconferencing; one-third of the time making phone visits and email visits; and one-third of the time supporting the care team. As a result of this care model, patients may be cared for via multiple encounter modes, including phone visits, email, and nonphysician team member visits.

Under the MediQHome program, provider reimbursement provides that for each BCBSND member with a chronic disease condition, the provider receives a semi-annual "care management fee" that is based on whether the member has single or multiple chronic conditions. Current barriers to the program include ongoing discussion of whether the care management fee is set at an appropriate rate.

The committee sought to determine whether there may be legislative actions that could be taken to incentivize use of the MediQHome program. The committee considered whether the PERS uniform group plan could be used to increase participation in the MediQHome program and whether the Medicaid program could be incentivized to increase usage of the MediQHome program. The committee was essentially informed that continued growth and success of the program will rely on primary care clinicians embracing the program. In order to support primary care clinicians, a successful patient-centered medical home program should include resources for providers and workforce support. Blue Cross Blue Shield of North Dakota is providing practices with health technology tools and sharing patient data with physicians and their staff, hopefully giving the practitioners the resources they need to improve the care they provide to their entire patient population.

Although BCBSND is the largest commercial insurer in the state, CMS is the largest payor in the state. Due to North Dakota's small size, BCBSND has not been successful in motivating CMS to start pilot projects in the state to increase outcome-based reimbursement instead of fee-for-service reimbursement. It was reported that if the providers can agree on the price and the metrics, the MediQHome program will continue to grow and gain steam.

The committee also received information regarding coordinated care efforts being taken in South Dakota with state employees and Medicaid recipients and coordinated care efforts being taken by DHS.

Preventive Health and Wellness

The committee received testimony from the State Health Officer regarding primary prevention, which is the prevention of risk factors associated with disease and death; secondary prevention, which is identifying a disease process and intervening to prevent further complications or death; and tertiary prevention, which includes rehabilitation or palliation working with people who have complications of disease and preventing or inhibiting further deterioration to the extent possible. The business plan for our current health care system primarily revolves around secondary and tertiary prevention of diseases. The reality is reimbursement for treatment of disease is much greater than providing prevention care in most clinical situations. A major change to the reimbursement formula to encourage effective prevention is part of the answer to improve quality of life and decrease or significantly modify health care costs.

The State Health Officer identified comprehensive worksite wellness and school wellness as realistic and cost-effective ways to increase integration. The State Health Officer suggested the following changes and strategies should be considered when looking at improvements to the health and wellness system in the United States and in North Dakota:

- Transition from disease to wellness orientation;
- Transition from fee-for-service to outcome reimbursement;
- Increase the number and distribution of primary care clinicians;
- Establish effective medical homes;
- Truly engage communities to own their problems and solutions;
- Enhance the integration of public health and primary care; and
- Improve access of the total population to health care and wellness services.

The committee received data regarding the cost chronic diseases have on the state, including heart disease, stroke, cancer, obesity, diabetes, and binge drinking, and also received reports of successful efforts taken at the local level to address some of these chronic diseases.

The committee received information regarding efforts being taken by private health systems in the state to provide preventive health and wellness services, including:

- Patient-centered medical homes;
- Health coaches;
- Health education;
- Health professional education;
- Corporate wellness;
- Research; and
- Partnership initiatives.

Healthy North Dakota Initiative

In compliance with the committee's study charge to study the immediate needs and challenges of implementing the Healthy North Dakota initiative, the committee received a report on the status of the initiative from the Healthy North Dakota Coordinator, who is hired as a consultant to State Department of Health (DOH).

Healthy North Dakota is a statewide partnership that brings together partners and stakeholders to identify common strategies to address health issues. The initiative is organized as follows:

1. Healthy North Dakota workgroups.
2. Statewide Vision and Strategy Group:
    a. Statewide Vision and Strategy Planning Committee; and
    b. Statewide Vision and Strategy Steering Committee.

The framework of the initiative is designed to help people make healthy choices by focusing on wellness and prevention in schools, workplaces, senior centers, homes, and any place people live, learn, work, and play. The initiative is working to help identify and fill gaps in prevention efforts. The Statewide Vision and Strategy Group has developed the current state health improvement plan (SHIP) and strategic map, which includes long-term vision for

initiatives up to the year 2020. The SHIP is intended to give direction to overarching clinical, public health, and integration goals and targets.

The report identified funding of the initiative as a challenge. The federal preventive health and health services block grant from the Centers for Disease Control and Prevention funds the initiative. This block grant is one of the few grants received by DOH which provides leeway to select the health issues for which to dedicate the funding. The DOH has seen a reduction in this grant amount in each of the past four years and the future status of this funding is uncertain.

Delivery Technology

The committee received testimony from representatives of Avera Health, a South Dakota company that offers telemedicine services in some North Dakota hospitals. In addition, the committee received testimony from a representative of one of the North Dakota hospitals that contracts with Avera Health for these telemedicine services.

The testimony described the health care situation in North Dakota as the perfect storm--with Medicaid Expansion, a retiring workforce, obesity and chronic condition rates, aging baby boomers, declining reimbursement for medical services, federal funding cuts, accountable care organizations, a surge in transient workers and population growth, and unmet mental health needs. Telemedicine was presented as a new and innovative health care delivery system that increases access to health care services while reducing travel, utilizes evidence-based protocols across the entire health care delivery network, allows for expanded use of nurse practitioners and physician assistants by having a physician readily available, improves safety with earlier intervention and reduction of costly transport, and provides care that is not dependent on the location of the provider, which allows for better workforce distribution. Telemedicine was presented as a way to address rural challenges as well as a way to support workforce needs.

The presentation of the Avera Health eEmergency telemedicine services indicated the eEmergency services use two-way video equipment in rural emergency rooms to link to emergency trained physicians at a central hub, 24 hours per day, seven days a week. Contracting hospitals pay a set, flat monthly fee that is based on the hospital's size, volume, and acuity of care. A representative of a contracting hospital testified that when the hospital uses eEmergency, its billing does not change.

The committee was informed possible public policy issues related to telemedicine include credentialing, technology connectivity, reimbursement, licensure, and expansion of approved services.

The committee received testimony from a representative of DocbookMD, regarding the DocbookMD application designed for use by physicians. The application is being used in 39 states and just recently became available to North Dakota physicians.

The committee received testimony from a representative of LifeLineMobile, Inc., which is a business that makes specialized vehicles called mobile units for health care delivery. The Ronald McDonald House uses one of these mobile units for the Bridging the Dental Gap program. The committee was informed there do not appear to be any state laws that negatively impact the ability of providers to use these mobile units. Over time, the improvements in technology connectivity are improving.

Emergency Room Usage

The committee received information regarding whether the state can take steps to address problems related to hospital emergency rooms being used for conditions that are not medical emergencies. The committee reviewed the requirements of the federal Emergency Medical Treatment and Labor Act (EMTALA), and how this federal law limits state action regarding the matter of hospital emergency departments. In general, EMTALA requires hospitals with emergency departments to provide a medical screening examination to an individual who comes to the emergency department and requests such an examination. The federal Emergency Medical Treatment and Labor Act prohibits hospitals with emergency departments from refusing to examine or treat an individual with an emergency medical condition.

The committee was informed hospitals with an emergency department which participate in Medicare are required under EMTALA to:

- Provide an appropriate medical screening examination to any individual who comes to the emergency department;
- Provide necessary stabilizing treatment to an individual with an emergency medical condition or an individual in labor;

- Provide for an appropriate transfer of the individual if either the individual requests the transfer or the hospital does not have the capability to provide the treatment necessary to stabilize the emergency medical condition or the capability or capacity to admit the patient; and
- Not delay examination or treatment, or both, to inquire about the individual's insurance or payment status.

The committee was informed EMTALA was implemented to prevent the "dumping" of patients who were unable to pay for services. Prior to EMTALA, a patient coming into a hospital emergency department often had no right to treatment or even evaluation, no matter how dire the medical condition. If patients could not prove that they had the resources to pay for care, they could be turned away or sent elsewhere. These individuals often suffered adverse health consequences or death as a result of delayed care. The federal Emergency Medical Treatment and Labor Act was designed to provide protection to patients.

In investigating possible state options, the committee learned hospitals are not allowed to move individuals to off-campus facilities or departments, such as an urgent care center or satellite clinic, for a medical screening examination. In two specific situations in North Dakota the layout of the hospital made it such that patients presented to a central desk and a receptionist triaged individuals to either the emergency room or to the attached clinic. This situation was not allowed by CMS and the hospitals were required to come into compliance with EMTALA. In addition, hospitals that refer patients to a clinical setting after presenting to the emergency room but before a medical screening examination has determined no emergency medical condition exists have been found to be in violation of EMTALA.

As EMTALA relates specifically to critical access hospitals, the law requires critical access hospitals to provide emergency care on a 24-hour-a-day basis. All emergency services in a critical access hospital must be provided as a direct service. The emergency room cannot be a provider-based offsite location. An adjacent clinic used for emergency purposes does not meet this requirement. If a patient presents to the critical access hospital a medical screening examination to determine if an emergency medical condition exists must be conducted. If a patient is sent from the emergency room to an adjacent clinic prior to a medical screening examination, this would be considered a violation of EMTALA. If a medical screening examination determines an emergency medical condition does not exist, the EMTALA obligations have been met.

The committee was informed that unlike some other federal regulations, EMTALA does not include a state option to waive the requirements. A waiver may only be issued when the President has declared an emergency or disaster and the Secretary of HHS has declared a public health emergency and has exercised waiver authority.

A representative of the DOH testified it may be valuable for hospitals to review the hospitals' policies to ensure reasonable steps are being taken to increase use of walk-in clinics. The committee discussed the desire of having DOH work with the North Dakota Congressional Delegation to address the issues related to emergency room usage and the possibility of allowing emergency department referrals to walk-in clinics.

Community Health Needs Assessments

The committee received a presentation of the Center for Rural Health's summary of the most recent community health needs assessments (CHNAs) of North Dakota hospitals. Under the ACA, nonprofit hospitals are required to complete a CHNA once every three years. The summary is not required but was compiled as a service to put the data in an aggregate report. The ACA requires the hospitals to complete a CHNA, prioritize the identified needs, and develop an implementation strategy that outlines how the hospital will address some of the identified issues.

The summary of the most recent North Dakota CHNAs completed by 39 hospitals identified the 10 most frequent themes or subjects reported in the CHNAs:

Theme or Subject	Number of CHNAs Including This Theme or Subject
Health care workforce shortages	28
Obesity and physical inactivity	16
Mental health	15
Chronic disease management	12
Higher costs of health care for consumers	11
Financial viability of the hospital	10
Aging population services	9
Excessive drinking	7
Uninsured adults	6
Maintaining emergency medical services	6
Emphasis on wellness, education, and prevention	6
Access to needed equipment or facility update	6

Scope of Practice

The committee received information from medical providers regarding an opportunity to better utilize advanced practice registered nurses in the involuntary commitment proceedings process. The practitioners requested the law be amended to allow advanced practice registered nurses to practice at the full range of their scope of practice.

RECOMMENDATIONS

Legislative Management Study of North Dakota's Health Care Delivery System

The committee recommends House Bill No. 1035 to provide for the Legislative Management to continue its ongoing study of the needs and challenges of the North Dakota health care delivery system. The study may include monitoring the implementation of the ACA, examining Medicaid Expansion and Medicaid reform, and considering the feasibility of developing a state-based plan for a health care model that will comply with federal health care reform in a manner that will provide high-quality access and affordable care for North Dakota citizens. The School of Medicine and Health Sciences Advisory Council would be required to make periodic reports to the Legislative Management on the status of the biennial report developed pursuant to Section 15-52-04.

Health Professional Assistance Programs Study and Report

The committee recommends House Bill No. 1036 to direct DOH during the 2015-16 interim to evaluate state programs to assist health professionals, including behavioral health professionals, with a focus on state loan repayment programs for health professionals. During the 2015-16 interim DOH shall make periodic reports to the Legislative Management on the outcome of the study, including presentation of recommended legislation.

Medicaid and Medicaid Expansion Cost-Sharing Study and Report

The committee recommends House Bill No. 1037 to direct DHS during the 2015-16 interim to study options for implementing income-based cost-sharing provisions for the Medicaid and Medicaid Expansion programs. This study must include consideration of provider recovery rates for copayments, information technology capacity for implementing income-based cost-sharing provisions, consideration of how income-based cost-sharing has been implemented by other states, analysis of the costs and benefits of cost-sharing, and consideration of whether cost-sharing improves the effectiveness of Medicaid and Medicaid Expansion programs. Before July 1, 2016, DHS would be required to report to the Legislative Management the outcome of the study and the associated legislative recommendations and related draft legislation.

Telemedicine

The committee recommends House Bill No. 1038 to provide that the PERS uniform group insurance must provide medical benefits coverage under a policy that provides coverage for health care services provided by a health care provider or health care facility by means of telemedicine which are the same as the policy coverage of in-person health care services provided by a health care provider or health care facility. The mandate is limited to the PERS system, the mandate expires in two years, the bill directs PERS to study the impact of the bill during that two-year period, and the bill directs PERS to introduce to the 65th Legislative Assembly a bill to extend the mandate of coverage to the private health insurance market.

Substance Abuse Treatment

The committee recommends House Bill No. 1039 to amend the group health policy mandate for substance abuse coverage. The bill applies the substance abuse coverage requirements to all health insurance policies, removes the coverage requirement formulas for different types of substance abuse services, and clarifies that required coverage must include inpatient treatment, treatment by partial hospitalization, residential treatment, and outpatient treatment.

Involuntary Commitment Proceedings

The committee recommends House Bill No. 1040 to provide for revision of the involuntary commitment proceeding law to update the language and to expand the statutory authority of advanced practice registered nurses to authorize advanced practice registered nurses to act as independent expert examiners in involuntary commitment proceedings.

Medicaid Expansion Contracts

The committee recommends House Bill No. 1041 to amend the Medicaid Expansion law to provide if DHS implements the Medicaid Expansion program through a contract with a private carrier, the department shall issue one RFP for the health insurance component of Medicaid Expansion and shall issue one RFP for the pharmacy benefit management component of the Medicaid Expansion or shall provide the pharmacy benefit management services through DHS. The bill provides if the pharmacy benefit management component is not provided through DHS, the contract between the department and the pharmacy benefit manager must include specified provisions that address passthrough pricing, transparency, and audit provisions.

HEALTH SERVICES COMMITTEE

The Health Services Committee was assigned the following responsibilities:

1. Section 1 of House Bill No. 1454 (2013) directed a study of how to improve access to dental services and ways to address dental service provider shortages, including the feasibility of utilizing mid-level providers, whether the use of incentives for dental service providers to locate in underserved areas in the state may improve access, and whether the state's medical assistance reimbursement rates impact access to dental services.
2. Section 2 of Senate Bill No. 2024 (2013) directed a study of the comprehensive statewide tobacco prevention and control plan used in this state. As part of the study, the Tobacco Prevention and Control Executive Committee and the State Department of Health must work together to create a single assessment of programs in both agencies, including funding sources for the programs, service providers, areas and populations served by the programs, and effectiveness of the programs on improving the health and policy environment in the state. The Tobacco Prevention and Control Executive Committee and the State Department of Health must present this assessment to the Legislative Management.
3. Senate Concurrent Resolution No. 4002 (2013) directed a study of the feasibility and desirability of community paramedics providing additional clinical and public health services, particularly in rural areas of the state, including the ability to receive third-party reimbursement for the cost of these services and the effect of these services on the operations and sustainability of the current emergency medical services (EMS) system.
4. Section 9 of Senate Bill No. 2004 (2013) directed a study of the funding provided by the state for autopsies and state and county responsibilities for the cost of autopsies, including the feasibility and desirability of counties sharing in the cost of autopsies performed by the State Department of Health and the University of North Dakota (UND) School of Medicine and Health Sciences.
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. A report from the Department of Human Services, State Department of Health, Indian Affairs Commission, and Public Employees Retirement System (PERS) before June 1, 2014, on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes.
   c. A report from the North Dakota University System before November 15, 2013, regarding the findings of its study of the out-of-state programs in veterinary medicine, optometry, and dentistry; the access of North Dakota students to those programs; and the state's needs for dentists, optometrists, and veterinarians.

Committee members were Senators Judy Lee (Chairman), Howard C. Anderson, Jr., Robert Erbele, Joan Heckaman, Oley Larsen, and Tim Mathern and Representatives Dick Anderson, Alan Fehr, Curt Hofstad, Rick Holman, Jon Nelson, and Marvin E. Nelson.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

DENTAL SERVICES STUDY

Section 1 of House Bill No. 1454 directed a study of how to improve access to dental services and ways to address dental service provider shortages, including the feasibility of utilizing mid-level providers, whether the use of incentives for dental service providers to locate in underserved areas in the state may improve access, and whether the state's medical assistance reimbursement rates impact access to dental services.

Background

The committee reviewed previous studies and reports relating to access to dental services and ways to address dental service provider shortages, including a report received by the 2007-08 interim Human Services Committee on the status of medical assistance recipients' access to dental services.

Medicaid dental-related expenditures totaled $12.3 million for the 2005-07 biennium and $14.5 million for the 2007-09 biennium. During the 2009-11 biennium, dental expenditures under Medicaid totaled $23.5 million--a 62 percent increase from 2007-09 biennium expenditures. During the 2011-13 biennium and 2013-15 biennium, funding appropriated for Medicaid dental services totaled $24 million and $28.7 million, respectively.

State Dental Care Programs

The committee reviewed state programs relating to dental care, including:

- **Medicaid** - An assistance program for eligible individuals without health insurance or for those whose health insurance does not cover all of their needs. Medicaid provides limited dental care services, and copayments may apply for certain recipients.
- **Healthy Steps** - The state children's health insurance program (CHIP) 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. Healthy Steps-covered services include dental services; however, copayments are required for certain services.
- **Caring for Children** - A benefit program for eligible North Dakota children up to age 19 who do not qualify for Medicaid or Healthy Steps and have no other insurance. Benefits include primary and preventative medical and dental care.
- **Health Tracks** - Formerly early periodic screening diagnosis and treatment, Health Tracks is a preventative health program that is free for children aged 0 to 21 who are eligible for Medicaid. Health Tracks pays for screenings, diagnosis, and treatment services to help prevent health problems from occurring or help keep health problems from becoming worse. Health Tracks also pays for orthodontics.
- **Mobile dental care services** - In 2009 the Legislative Assembly provided $196,000 of one-time funding from the general fund to the State Department of Health to help establish a mobile dental facility. An area foundation is responsible for ongoing costs estimated at $400,000 per year. The 2013 Legislative Assembly provided an additional one-time appropriation of $100,000 from the general fund to the State Department of Health for a grant to the organization to provide mobile dental care services, including dental treatment, prevention, and education services to low-income and underserved children in areas of the state with limited or unavailable dental services.
- **Donated dental services program** - Supported by a $50,000 general fund appropriation to the State Department of Health during the 2013-15 biennium, the program provides dental care, through a network of 141 volunteer dentists and 29 dental laboratories, to disabled, elderly, or medically compromised individuals who cannot afford treatment. The committee learned 671 individuals have received over $2 million in donated dental therapies since the program's inception in 2000.
- **Smiles for Life fluoride varnish program** - A school-based fluoride varnish and sealant program.

Dental Service Provider Programs

The committee received information regarding the following dental service provider programs:

- **Dental practice grant program** - Established in 2007 by the Legislative Assembly, the program allows a dentist who has graduated from an accredited dental school within the previous five years and is licensed to practice in North Dakota to submit an application to the Health Council for a grant to establish a dental practice in North Dakota cities with populations of 7,500 or less. The Health Council may award a maximum of two grants per year with a maximum grant award of $50,000 per applicant to be used for buildings, equipment, and operating expenses. The community in which the dentist is located must provide a 50 percent match. The grant must be distributed in equal amounts over a five-year period, and the dentist must commit to practice in the community for five years.
- **State loan repayment program** - Established in 2001, the dentists' loan repayment program provides loan repayment benefits to dentists willing to serve in underserved communities in the state. Each year the Health Council may select up to three dentists to participate in the program. Successful applicants must enter a four-year, full-time, nonrenewable contract with the State Department of Health, must accept Medicare and Medicaid assignment, and may receive up to $80,000 to repay eligible loans. The funds are payable over a four-year period ($20,000 per year). The program provides the highest priority for acceptance into the program to dentists willing to serve the smallest and most underserved communities in North Dakota.
- **Public health and nonprofit dental loan repayment program** - A program providing loan repayment benefits to up to three dentists during the 2013-15 biennium willing to serve in public health and nonprofit dental settings

that offer a discounted or sliding fee scale for patient billing. Successful applicants must serve full time for three years and may receive up to $60,000 over two years to repay educational loans.

- **Federal/state loan repayment program (SLRP)** - A program providing loan repayment benefits to dentists serving in communities designated as dental health professional shortage areas (HPSAs). The program was established through a grant from the federal Health Resources and Services Administration (HRSA), is only available in communities designated as dental HPSAs, and requires the state must match federal funds. Successful applicants may receive up to $60,000 to repay educational loans and must agree to a two-year contract at a site that accepts Medicare and Medicaid assignment and offers a reduced rate or no fee for services.
- **National Health Service Corps loan repayment program** - A federal program providing loan repayment benefits to dental providers serving in communities designated as dental HPSAs. Providers are selected for the program based on the community's HPSA score. Providers receive $50,000 in loan repayment funds for a two-year commitment. This program does not require matching funds, and providers may receive continuation awards.

North Dakota State College of Science Dental Programs

The committee reviewed North Dakota State College of Science dental programs and options to expand those programs. The college offers two options, including a certificate and an associate in applied science. The college receives between 48 and 59 applicants per year for the dental assisting program which has a capacity of 20 students. The dental hygiene program graduates approximately 25 students per year with an Associate in Applied Science in Dental Hygiene degree, over half of which also obtain an Associate in Applied Science in Liberal Arts degree. Most of the students are from North Dakota cities with populations of less than 50,000. A bachelor's degree in dental hygiene would require 30 to 35 additional credit-hours.

The college has placed 100 percent of the dental assisting graduates each year since 2010. Placement rates for the dental hygiene program from 2010 to 2013 ranged from 91 percent in 2010 to 100 percent in 2011. In 2013 the average salary of a dental assistant was $2,704 per month, and the average salary of a dental hygienist was $4,132 per month.

Dental Health Workforce

The committee reviewed a report on the health care workforce in the state. The UND School of Medicine and Health Sciences conducted research on the health care workforce in the state, including dental providers, and published a report entitled *2010 Snapshot of North Dakota's Health Care Workforce*. The committee learned there were 392 dentists in the state in 2010, and in April 2014, there were 435 dentists, an increase of 10.9 percent from 2010. There were also 653 dental assistants and 747 dental hygienists in the state in April 2014.

Currently 34 percent of the counties in the state are either fully or partially designated as dental HPSAs, down from 36 percent in 2010. To be designated a dental HPSA, based on reasonable services areas, the population-to-provider ratio must be greater than 5,000 to 1 and contiguous areas are over-utilized, excessively distant, or inaccessible to the population of the area under consideration. A dental HPSA designation is valid for three years, and counties are continually reviewed for HPSA status.

The committee received information regarding the distribution of dentists in the state and the appropriate number of dentists in a population. Nationally, the recommended ratio is one dentist per 1,612 residents and in North Dakota the ratio of dentists to population is approximately one dentist per 1,750 residents. This ratio compares favorably with South Dakota (1:1,890) and Iowa (1:1,825) but not with Minnesota (1:1,630). The committee learned North Dakota's growing economy has brought more dentists to the state to practice and the number of licenses issued by the State Board of Dental Examiners has been steadily increasing. The favorable ratio of dentists to population indicates the state does not have a shortage of dentists but rather a misdistribution of dentists around the state.

Access to Dental Services

The committee received information regarding an environmental scan and contextual assessment of the oral health of North Dakota's residents done in 2012 by the Center for Health Workforce Studies at the School of Public Health, University at Albany, New York. The report indicated oral health professionals are located mostly in urban areas of the state and several counties are without a practicing dentist. The federal government has designated 31 dental health professional shortage areas in the state which lack sufficient providers to meet the dental needs of the population. The environmental scan and assessment indicated, while the state has made progress in increasing access to oral health services, some populations still have limited access to these services, including children, especially the very young and those Medicaid-eligible; rural populations; low-income adults; the elderly; and American Indians. A shortage of dentists willing to accept Medicaid patients has resulted in a small number of dentists in the state treating the majority

of children on Medicaid and limiting the availability of oral health services even in areas of the state where there is an adequate supply of dental professionals.

The committee learned barriers to accessing oral health care exist in the state and include poverty, geography, workforce, an insufficient number of providers that accept Medicaid patients, lack of oral health education, language, cultural barriers, fear, and age, especially those in nursing homes. Additional barriers, particularly in reservation communities, include insufficient federal funding and administrative challenges in clinics. Indian Health Service (IHS) procedures are onerous for volunteers and it can take six months to nine months to be authorized to perform services at an IHS clinic. The complex and lengthy federal credentialing process makes it difficult to recruit dentists within the IHS system and access to dentists and dental services on the reservations has been limited for decades.

A 2008 survey reported less than one-fourth of North Dakota dentists accept all Medicaid patients, one-third of dentists limit the number of new Medicaid patients, and rural dentists are more likely to accept all Medicaid patients than urban dentists.

The committee learned 40 counties had a dentist that provided a service to 1 to 49 children (ages 0 to 20 years) enrolled in Medicaid, 26 counties had a dentist that provided a service to 50 to 99 children enrolled in Medicaid, and 18 counties had a dentist that provided service to 100 or more children enrolled in Medicaid.

The committee learned Medicaid payments for dental services are approximately 61.6 percent of billed charges in North Dakota. Increasing the Medicaid reimbursement to the 75th percentile would encourage more dental service providers to serve that population.

The committee learned the state has four safety net dental clinics, three of which are federally qualified health centers (FQHCs). The dentists at safety-net clinics often perform extractions that could have been prevented with timely access to comprehensive education and preventative care. Safety-net clinics have few places to refer patients needing more complex procedures, and patients often go without necessary care. Providers at safety net clinics struggle with the limited scope of practice and not practicing to the full extent of their training results in higher turnover rates at these clinics.

Legislation was approved in 2009 authorizing general supervision of licensed dental hygienists for procedures authorized in advance by a dentist. In 2011 four public health hygienists employed by the State Department of Health and paid through a federal grant began applying fluoride varnish and dental sealants to children in prekindergarten through sixth grade and in some schools grades 7 through 12. Since 2011, the program has served approximately 1,700 students per year. However, loss of the federal grant has resulted in a significant reduction in the number of students served.

The committee learned a HRSA workforce grant will provide $400,000 per year for school-based dental health prevention services. Part of the funding will be contracted to Ronald McDonald House Charities and Bridging the Dental Gap to expand their service area and the remainder will be used for the department's sealant program. When the department received the federal funding to reestablish school-based dental health prevention services in September 2014, the target population was schools where 45 percent or more of the students qualify for free or reduced lunches. Based on 2013 information available from the Department of Public Instruction, 89 schools would qualify for services during the 2014-15 school year. The additional cost to serve all students in the state eligible for free or reduced lunches would be approximately $2.6 million.

Proposals to Increase Access

Case Management

The committee received information regarding a proposed case management program in communities with the most need. The program could provide oral health education and coordinate dental care to help eliminate the "no-show" problem faced by dental providers. The case management model would enable registered dental assistants and hygienists to provide oral health assessments, fluoride varnish, sealants, and case management to high-risk patients in community settings. The services would be provided in preschools, elementary schools, medical settings, or long-term care facilities. Dental professionals would identify high-risk patients and link them to a dental home. Case management has been shown to reduce barriers to care for Medicaid recipients. Case management would include educating individuals, identifying barriers to care, and following up to remove barriers and link the patient to a dental home.

Grant funding is available as part of a pilot project for the reimbursement of outreach services and administrative costs of a case management program study. State support would be needed for matching grants to implement the model. The five-year pilot project would provide an opportunity to prove case management is a cost-effective service and that it has the potential to significantly reduce dental costs, improve oral health, and decrease tooth decay.

Expanded Function Dental Auxiliary

The committee learned creating expanded function dental assistants and hygienists would free up dentists to provide other services. The expanded function dental auxiliary (EFDA) exists in 44 states, the District of Columbia, Public Health Service, Indian Health Service, and the United States military. Expanded function dental auxiliaries have been shown to improve efficiencies which can lead to increased access and lower costs. Benefits to employing an EFDA include: dentists already have a working relationship with the EFDAs and the increased function will provide for efficiencies, existing staff would not have to leave the community for training, investments made in the existing workforce living and working in the area are less likely to practice elsewhere.

The committee reviewed amendments to Article 20-01 of North Dakota Administrative Code proposed by the State Board of Dental Examiners to expand the functions of dental assistants and hygienists. The proposed amendments broaden the scope of practice for the licensed dental hygienist and the registered dental assistant by creating two categories for each profession--the restorative function endorsement and the anesthesia assistant endorsement. Oral assessment and oral hygiene treatment planning have been expanded, and the list of duties includes additional restorative and anesthesia functions performed under appropriate supervision.

Mid-Level Dental Providers

Dental therapists have practiced in New Zealand and the United Kingdom for decades. Existing comprehensive program accreditation processes include standards on admission policies and procedures, curriculum, clinic, administration, preparation for practice, student assessment and examination, evaluation procedures and outcomes, research, and articulation pathways (team integration experience). Minnesota recognizes dental therapists to provide specific dental services. Two models exist in Minnesota--the dental therapist (DT) and the advanced dental therapist (ADT). In Alaska dental therapists only provide care within the tribal health system. Dental therapists may educate patients, perform oral examinations and preventative procedures, drill and repair early stages of tooth decay, and assist in other procedures.

Minnesota - The dental therapy program at the School of Dentistry, University of Minnesota, is in its fifth year, and through December 2013, the program graduated 27 dental therapists in three classes. Dental therapy students are fully integrated into the existing accredited dental and dental hygiene education programs. The Board of Dentistry of Minnesota has accredited the program. The federal Centers for Medicare and Medicaid Services (CMS) has demonstrated interest in the dental therapy model by awarding a $45 million state innovation model grant to the Minnesota Department of Health and the Minnesota Department of Human Services. The goal of the innovation model is to expand the use of innovative provider types within primary care practices, and the grant will support the integration of new providers, such as dental therapists, into clinical practices. Minnesota's dental therapists are employed in private practice, group practice, nonprofit community clinics, and FQHCs. They are employed in urban and rural areas, and feedback from employers has been positive. The committee received a report entitled *Early Impact of Dental Therapists in Minnesota* presented to the Minnesota Legislature in February 2014. Preliminary results included in the report indicate:

- Clinics employing DTs/ADTs see more patients, and most are on public programs and are underserved;
- DTs/ADTs improve efficiency of clinics, allowing dentists to handle more complex procedures;
- DTs/ADTs have reduced wait times and travel distances for patients;
- DTs/ADTs produce direct cost-savings to dental clinics;
- Dental clinics use most savings from DTs/ADTs to see more public program and underserved patients;
- No quality or safety concerns; and
- Further research is needed since the program is new and the number of DTs/ADTs is relatively small.

Alaska - Dental therapists in Alaska only provide care within the tribal health system; however, they may treat nonnative patients only if there is no access to a dental service provider and there is a compact agreement with the IHS to treat nonnative patients. A 2010 study funded by the W.K. Kellogg Foundation, the Rasmuson Foundation, and the Bethel Community Service Foundation, confirmed that dental therapists are filling a vital need in Alaska, expanding the services of dentists, and allowing those in remote areas to receive care. The evaluation suggests alternative workforce models like dental therapists can be part of the solution as they expand the outreach of the dental team, provide treatment and alleviate pain for vulnerable families and children who have not had regular access to care, and often return to practice in the underserved communities where they grew up. In Alaska dental therapists have been providing preventative and basic dental care in remote tribal villages since 2005. In 2013, 25 certified dental therapists were working in over 80 villages in Alaska to provide care to over 30,000 individuals who previously had limited or no access to dental care. A 2010 study found that 95 percent of patients were satisfied or very satisfied with care received from dental therapists.

North Dakota Center for Rural Health Assessment

The committee received a report from the North Dakota Center for Rural Health regarding findings included in its preliminary report titled *North Dakota Oral Health Report: Needs and Proposed Models, 2014.* The report was the result of a Center for Rural Health assessment of the oral health needs in the state. Based on data, input member responses, and stakeholder meetings, three primary oral health needs were identified, including prevention programs, dental insurance revision and/or care access, and greater workforce and improved access to care. The greatest need for oral health literacy and prevention was among special populations--children, aging, Medicaid patients, low-income, homeless, new Americans, American Indians, rural, and those with physical/mental disabilities. Increased Medicaid reimbursement would incentivize dentists to accept more Medicaid patients and services to long-term care residents could be restructured to fit current Medicare reimbursement. There is a need to adjust the uneven distribution of the current workforce. In 2013, 67 percent of all licensed dentists in the state worked in the four largest counties.

The stakeholder and input groups developed and discussed 24 possible oral health models and the stakeholder working group identified the following top five stakeholder priority models:

1. Increase funding and reach of safety-net clinics to include services provided in western North Dakota, using models/idea/support from nonprofit oral health programs similar to Apple Tree Dental and Children's Dental to promote hub-and-spoke models of care.
2. Increase funding and reach of the Seal!ND program to include using dental hygienists to provide care and incorporating case management and identification of a dental home as proposed under the North Dakota Dental Association's case management model, including Medicaid reimbursement for services rendered.
3. Expand scope of dental hygienists and utilize dental hygienists at the top of their current scope of work to provide community-based preventive and restorative services and education among populations of high need.
4. Create a system to promote dentistry professions among state residents and encourage practice in North Dakota through a consolidated loan repayment program and partnership/student spots at schools of dentistry.
5. Increase Medicaid reimbursement.

North Dakota Oral Health Coalition

The committee received information regarding the recommendations of the North Dakota Oral Health Coalition. The coalition's recommendations are similar to the models identified by the North Dakota Center for Rural Health and include:

- Expand the Seal!ND program through the State Department of Health oral health programs to target low-income children at public schools;
- Expand funding for dental safety net clinics to include mobile, nonprofit and FQHCs;
- Expand, simplify, and consolidate the North Dakota dental loan repayment programs;
- Provide funding for the case management outreach model supported through the State Department of Health and the North Dakota Dental Association;
- Facilitate the expansion of duties for dental assistants and hygienists through innovative, nontraditional, outreach education programs to minimize geographic and employment barriers for the current workforce.

Other Information and Testimony

The committee conducted a tour of Family HealthCare, Fargo, one of four safety net dental clinics in the state. The committee learned patients are served regardless of ability to pay, and services are billed on a sliding fee scale. The committee learned the state public health dentist loan repayment program has helped the clinic recruit dentists. However, because the clinic is only able to perform basic procedures and must refer patients for additional services, such as crowns, partials, and dentures, providers are unable to perform to their full scope of practice, resulting in high turnover rates.

The committee received information and testimony from other interested persons, including representatives of the dental therapy training programs in Minnesota and Alaska, The Pew Charitable Trusts, North Dakota Center for Rural Health, North Dakota State College of Science, and the North Dakota State Board of Dental Examiners, various dental professionals, professional organizations, the Indian Affairs Commissioner, community health centers, senior housing and assisted living centers, and other stakeholders. Major comments and information provided include:

- A not-for-profit organization is serving adults with disabilities, long-term care residents, and low-income children and their families in urban and rural communities using a hub and spoke model of care delivery providing clinical student rotations for dental students, dental residents, DTs, dental hygienists, dental assistants, nurses, and certified nursing assistants. Mobile equipment and web-based information technology allow the organization to

provide services in nursing facilities, including oral health education for patients and staff, preventative care, dental screenings, and triage and care coordination.

- The dental loan repayment programs have been successful in providing access to dental care in many rural and underserved communities.
- Public health clinics are an integral part of the state's oral health delivery system and dental loan repayment programs encourage dentists to work in safety net clinics.

Recommendation

The committee recommends Senate Concurrent Resolution No. 4004 directing the Legislative Management to continue to study dental services in the state, including the effectiveness of case management services and the state infrastructure necessary to cost effectively use mid-level providers to improve access to services and address dental service provider shortages in underserved areas of the state.

COMPREHENSIVE STATEWIDE TOBACCO PREVENTION AND CONTROL STUDY

Section 2 of Senate Bill No. 2024 directed a study of the comprehensive statewide tobacco prevention and control plan used in this state. As part of the study, the Tobacco Prevention and Control Executive Committee and the State Department of Health must work together to create a single assessment of programs in both agencies, including funding sources for the programs, service providers, areas and populations served by the programs, and effectiveness of the programs on improving the health and policy environment in the state. The Tobacco Prevention and Control Executive Committee and the State Department of Health must present this assessment to the Legislative Management. In addition, the bill provides the study may include:

a. A review of the service delivery system for the comprehensive statewide tobacco prevention and control programs provided by the two agencies, whether the delivery system is fiscally efficient, and how the delivery system is consistent with the Centers for Disease Control and Prevention's (CDC) *Best Practices for Comprehensive Tobacco Prevention and Control Programs*;

b. A review of the effectiveness of the comprehensive statewide tobacco prevention and control programs provided in the state and ways to improve the health and policy outcomes of the programs; and

c. A review of how the comprehensive statewide tobacco prevention and control programs provided by the two agencies address the Native American population on the Indian reservations.

Background

The committee reviewed information relating to the comprehensive statewide tobacco prevention and control plan provided to the 2011-12 interim Health Services Committee, including 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 regarding a multistate settlement agreement negotiated between various states' Attorneys General and tobacco manufacturers, which resulted in annual distributions of tobacco settlement proceeds to the state. The 1999 Legislative Assembly established a plan for the use of this money through the passage of House Bill No. 1475 (Section 54-27-25), which established a tobacco settlement trust fund. Tobacco settlement payments received by the state under the Master Settlement Agreement are derived from two subsections of the Master Settlement Agreement. Subsection IX(c)(1) of the Master Settlement Agreement provides payments on April 15, 2000, and on April 15 of each year thereafter in perpetuity, while subsection IX(c)(2) of the Master Settlement Agreement provides for additional strategic contribution payments that began on April 15, 2008, and continue each April 15 thereafter through 2017. Section 54-27-25, created by 1999 House Bill No. 1475, did not distinguish between payments received under the separate subsections of the Master Settlement Agreement and provided for the deposit of all tobacco settlement money received by the state into the tobacco settlement trust fund. Money in the fund, including interest, is transferred into the community health trust fund (10 percent), common schools trust fund (45 percent), and water development trust fund (45 percent).

The November 2008 voter approved Initiated Measure No. 3 amended Section 54-27-25 to establish the tobacco prevention and control trust fund. The measure provided for tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement to continue to be deposited in the tobacco settlement trust fund and tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement relating to strategic contribution payments to be deposited from 2009 to 2017 into the tobacco prevention and control trust fund.

The measure also established the Tobacco Prevention and Control Advisory Committee and an executive committee to develop and fund a comprehensive statewide tobacco prevention and control plan consistent with the CDC's Best Practices for Comprehensive Tobacco Control Programs.

Comprehensive Tobacco Control Programs and Funding and Centers for Disease Control and Prevention Best Practices

State programs for tobacco prevention and control are administered by the State Department of Health and the North Dakota Center for Tobacco Prevention and Control Policy. Funding for the programs is provided from the tobacco prevention and control trust fund, the community health trust fund, and federal funds. The Legislative Assembly appropriated a total of $21,360,079 for tobacco prevention and control programs for the 2013-15 biennium, $3,220,354 of which is from the community health trust fund and $2,323,897 of federal funds to the State Department of Health and $15,815,828 of which is from the tobacco prevention and control trust fund to the Center for Tobacco Prevention and Control Policy. The 2013-15 biennium ending balance in the tobacco prevention and control trust fund is estimated to be $46.4 million and the ending balance in the community health trust fund is estimated to be $337,000.

The committee received information regarding CDC established "best practices" guidelines to help states plan and administer effective tobacco use prevention and control programs. The CDC published its *Best Practices for Comprehensive Tobacco Control Programs*, including related funding recommendations, in October 2007. Recommended program intervention budgets totaled $14.67 per capita per year in 2007 for North Dakota, and the CDC-recommended annual investment was $9.3 million or $18.6 million per biennium. Based on CDC guidelines, not adjusted for inflation or population growth, the biennial funding for recommended program budgets outlined in the publication by intervention is:

- State and community interventions - $9,344,640.
- Health communication interventions - $2,358,480.
- Cessation interventions - $4,462,140.
- Surveillance and evaluation - $1,623,780.
- Administration and management - $810,960.

The Tobacco Prevention and Control Executive Committee provided information to the 2013 Legislative Assembly regarding CDC-recommended funding levels for tobacco control programs and the effect of inflation and population changes on the recommended funding level for North Dakota. The executive committee indicated, based on published consumer price index changes and Moody's Analytics consumer price index changes for 2013 and 2014, the recommended annual per capita funding rates for the recommended interventions would total $17.02 and $17.44 for 2013 and 2014, respectively. Total CDC-recommended funding based on these rates and state population totals, adjusted proportionally for recent growth, would total $25 million for the 2013-15 biennium.

The committee reviewed information regarding the service delivery systems for the comprehensive statewide tobacco prevention and control programs provided by the State Department of Health and Center and how the delivery systems are consistent with the CDC's *Best Practices for Comprehensive Tobacco Control Programs*.

The committee received information regarding a comparison of State Department of Health and North Dakota Center for Tobacco Prevention and Control Policy funding allocations for the 2011-13 biennium to the CDC-recommended funding allocations:

2011-13 Biennium Tobacco Prevention and Control Funding Allocation

	State Department of Health	Tobacco Prevention and Control Executive Committee	Total	CDC-Recommended Funding Allocation
State and community interventions	5%	40%	45%	50%
Health communications		12%	12%	13%
Cessation	21%	10%	31%	24%
Surveillance and evaluation	2%	5%	7%	8%
Administration and management	2%	3%	5%	5%
Total	30%	70%	100%	100%

The committee learned total tobacco prevention and control spending by the State Department of Health and the North Dakota Center for Tobacco Prevention and Control Policy for the 2009-11 and 2011-13 bienniums, compared to the CDC-recommended funding levels for each focus area, was less than recommended by the CDC, as adjusted for inflation and population; however, there is no penalty for spending at levels less than the CDC-recommended level. The committee received the following information regarding the estimated allocation of the $21.4 million provided to

the State Department of Health and the Center for Tobacco Prevention and Control Policy for tobacco prevention and control programs during the 2013-15 biennium and the CDC-recommended funding for the same period:

Estimated Allocations of the 2013-15 Biennium Tobacco Prevention and Control Funding Appropriation and CDC-Recommended Funding

	State Department of Health[1]	Tobacco Prevention and Control Executive Committee	Total	CDC-Recommended Funding Allocation[2]
State and community interventions	$942,522	$9,614,644	$10,557,166	$11,725,765
Health communications		2,639,944	2,639,944	2,952,430
Cessation	3,880,976	1,486,282	5,367,258	5,597,024
Surveillance and evaluation	388,098	1,408,221	1,796,319	2,028,921
Administration and management	332,655	666,737	999,392	1,021,457
Total	$5,544,251	$15,815,828	$21,360,079	$23,325,597[2]

[1]The State Department of Health allocation by focus area is based on 2011-13 allocation percentages.

[2]The CDC-recommended funding allocation provided is based on known inflation and population at the time the budget is drafted. A CDC-recommended funding allocation based on anticipated increases in population and inflation during the 2013-15 biennium would result in total recommended funding of $25 million, approximately $3.6 million more than the funding appropriated by the 2013 Legislative Assembly.

The committee learned, for the 2011-13 biennium, based on 142,795 estimated tobacco users in the state and average annual expenditures of $8.6 million, tobacco prevention and control expenditures averaged $60.38 per tobacco user in the state. For the 2013-15 biennium, based on average annual tobacco prevention and control expenditures budgeted $10.7 million and an estimated 192,105 tobacco users in the state, tobacco prevention and control expenditures are anticipated to total $55.59 per tobacco user in the state during the 2013-15 biennium. Expenditures during the 2013-15 biennium are estimated to total $14.57 per capita statewide, $2.43 less than the CDC recommendation, adjusted for estimated inflation, of $17 per capita.

The committee received information on the programs provided by intervention category as follows:

State and Community Interventions

State and community interventions include work with disparate populations. These populations are more susceptible to certain diseases or risk factors. Groups at high risk for tobacco use in North Dakota include American Indians, adults aged 18 to 24, pregnant women, individuals with lower education status or lower economic earnings, and other groups such as members of the military, members of the lesbian/gay/bisexual/transgender (LGBT) communities, homeless people, bar and casino workers, new Americans (refugees, immigrants), rural residents, and people with mental or physical disabilities.

State Department of Health programs dedicated to assisting the disparate populations include:

- Tribal tobacco programs which provide grant funds, guidance, and technical assistance to each reservation.
- The Campus Tobacco Prevention Project (CTPP) which is a partnership between the State Department of Health tobacco prevention and control program and the North Dakota University System Consortium for Substance Abuse Prevention. The project addresses challenges North Dakota campuses are facing regarding awareness of tobacco cessation services among the campus community, including disparate populations.
- Baby and Me Tobacco Free is a cessation program created to reduce the burden of tobacco use on pregnant women and new mothers.
- Million Hearts Community Action Grant "S" (smoking cessation) program provides funding to the major health care systems in North Dakota to establish "cessation centers."
- NDQuits partners with Medicaid to provide coverage for all seven of the Food and Drug Administration-approved medications for cessation to Medicaid enrollees who want to quit tobacco and enroll in counseling.
- Lesbian/gay/bisexual/transgender/Fargo-Moorhead Pride includes providing information in partnership with Fargo-Moorhead Pride Collective about disparate tobacco use among LGBT populations and about quitting tobacco use through NDQuits.
- Other partnerships that are not related to a specific program but have an impact on tobacco use in disparate populations include the Department of Public Instruction, North Dakota School Boards Association, Governor's Prevention Advisory Council on Drugs and Alcohol, mental health and substance abuse prevention through the Department of Human Services, Statewide Epidemiological Outcomes Workgroup, Prevention Expert Partners Workgroup, and the North Dakota Center for Persons with Disabilities.

The North Dakota Center for Tobacco Prevention and Control Policy has 3 full-time equivalent (FTE) positions that manage 100 grants relating to local policy grants, tobacco settlement state aid grants, and special initiative grants and contracts.

Health Communications

Health communications at the North Dakota Center for Tobacco Prevention and Control Policy includes 1 FTE position and one temporary position for administering one to five contracts. Staff is responsible for the implementation of the statewide plan and for daily assistance to other staff, grantees, and contractors on public education to assure health communications is combined with state and community interventions.

Cessation

Cessation services provided by the State Department of Health and the Center include NDQuits, the PERS cessation program for state employees and eligible family members, the city/county cessation program for county employees and eligible family members, and the public health service guidelines initiative to Ask-Advise-Refer patients. All seven federal Food and Drug Administration (FDA) approved cessation medications are available in the PERS cessation program; however, liability concerns limit the NDQuits program to over-the-counter cessation products. Tobacco settlement state aid grants to local public health units provided by the North Dakota Center for Tobacco Prevention and Control Policy support cessation by requiring health units to ask clients about tobacco use, advise clients on quitting, and referring them to the NDQuits.

Surveillance and Evaluation

Surveillance, as defined by the CDC's *Best Practices for Comprehensive Tobacco Control Programs*, is the process of monitoring tobacco-related attitudes, behaviors, and health outcomes at regular intervals of time. The State Department of Health tobacco prevention and control program is involved with surveys that measure the adult and youth smoking and tobacco usage rates in North Dakota. Evaluations of the cessation programs offered through the State Department of Health are conducted on an ongoing basis and are used to assess program activities and to guide program improvement.

The North Dakota Center for Tobacco Prevention and Control Policy has 1 FTE position involved in statewide evaluation efforts involving one to three contracts. Staff is responsible for evaluation of the statewide plan and its impact and provides daily assistance to other staff, grantees, and contractors on evaluation.

Administration and Management

The tobacco prevention and control program within the State Department of Health is the lead for state and community interventions disparities activities; cessation, including promotion and evaluation related to the cessation services; and surveillance and evaluation only for cessation programs. The department has approximately 4.5 FTE positions working directly on tobacco prevention and control, including administrative support.

In addition to 8 FTE positions at the North Dakota Center for Tobacco Prevention and Control Policy, the Tobacco Prevention and Control Executive Committee provides funding for tobacco prevention and control employees at the local public health units.

Administration and management at the State Department of Health (2 percent) and the North Dakota Center for Tobacco Prevention and Control Policy (3 percent) accounted for 5 percent of all tobacco prevention and control expenditures during the 2011-13 biennium, consistent with CDC-recommended funding allocations.

Native Americans

The Intertribal Tobacco Use Coalition, made up of tribal tobacco prevention staff from each reservation, community members, the Indian Affairs Commission, and the Northern Plains Tribal Tobacco Technical Assistance Center, coordinate tribal tobacco prevention activities and resources in the state. The Cansasa Coalition provides education regarding the differences between commercial and traditional tobacco and seeks to shift cultural norms so commercial tobacco use is no longer socially acceptable. Chemical additives found in commercial tobacco take away from tobacco's original purpose in tribal ceremonies, and cigarettes and chewing tobacco have no connection to Native American spirituality.

The committee received information on the percentage of smokers in the state by race. Tobacco use among all adults in the state was 27.1 percent in 2011 and 26.2 percent in 2012. Tobacco use among white adults in the state was 25.3 percent in 2011 and 24.5 percent in 2012, while tobacco use among Native Americans was 59.7 percent in 2011 and 56.1 percent in 2012. While American Indians comprised 5.2 percent of the state's adult population in 2012, they represented 11.2 percent of the state's adult tobacco users.

The State Department of Health has been providing tobacco prevention and control grants to tribes since 2002. The State Department of Health provides funding and technical assistance to each tribe to implement tobacco prevention and control initiatives on each of the reservations. Each reservation has a tribal tobacco prevention coordinator who is an enrolled member of the tribe. The tribes are required to report outcomes. The primary objectives of tribal tobacco prevention and control programs are to:

- Evaluate readiness and implement tobacco taxes on reservations.
- Implement tobacco-free policies in public buildings, on school campuses, and in tribal housing.
- Engage health care personnel and tribal health stakeholders to manage chronic diseases adversely affected by tobacco use.
- Collaborate with the Northern Plains Tribal Tobacco Technical Assistance Center to educate community health representatives using culturally specific materials on motivational interviewing to assess tobacco use with their clients.
- Educate youth and the public on the dangers of commercial tobacco use.
- Educate reservation citizens on the dangers of secondhand smoke.
- Actively participate in the Intertribal Tobacco Abuse Coalition to coordinate statewide efforts to provide more effective tobacco prevention services and develop appropriate resources.
- Actively partner with tribal tobacco prevention coordinators funded by the Department of Human Services to more effectively deliver prevention services.

On each reservation, tribal tobacco program staff works closely with tribal prevention program staff to coordinate activities between programs. Tribal tobacco program staff also collaborates with tribal health programs and ensures their respective tribal councils are kept informed of tribal prevention activities. All of the reservations have smoke-free tribal buildings, and several schools on each reservation have adopted tobacco-free policies. The State Department of Health is partnering with the Intertribal Tobacco Abuse Coalition to advocate for smoke-free casinos statewide.

A tribal tobacco tax agreement with the Standing Rock Indian Reservation was signed in 1993. The agreement provides for the collection of the state tobacco tax on the reservation. The state retains 25 percent and returns the remaining 75 percent to the tribe. The Turtle Mountain Band of Chippewa Indians implemented a tobacco user's fee in May 2014. The fee is five cents per package on both smoke and smokeless tobacco and is generating from $12,000 to $13,000 per month in revenue. The funding provides medical assistance for tribal members receiving referrals for medical care off the reservation.

The committee learned the North Dakota Center for Tobacco Prevention and Control Policy awarded a special initiative grant to American Nonsmokers' Rights Foundation to advance commercial tobacco prevention policies on tribal lands and a contract to the Public Health Law Center to develop model comprehensive tobacco-free and smoke-free policies. Although the model comprehensive tobacco-free and smoke-free policies provide the greatest health protection possible, are enforceable, are equitable, and meet several specific criteria to be considered comprehensive, tribal tobacco program staff expressed concern regarding the lack of flexibility. The Center for Tobacco Prevention and Control Policy maintained that, although there are other practices that work, the Center for Tobacco Prevention and Control Policy has a fiduciary responsibility to use best practices. The North Dakota Center for Tobacco Prevention and Control Policy, the State Department of Health, and the Indian Affairs Commission agree collaboration is needed with regard to tobacco prevention and control among Native Americans.

Outcomes

The committee learned, since 2009, 11 communities have adopted local smoke-free policies and statewide the percentage of the state's population covered by comprehensive smoke-free air laws rose from 19.5 percent to 100 percent with the passage of a statewide measure in 2012. Based on the behavioral risk factor surveillance survey, adult smokeless tobacco use changed slightly from 2011 (7.2 percent) to 2012 (7.3 percent).

State Department of Health tobacco prevention and control program assessments during fiscal year 2009 and fiscal year 2014 indicate a reduction in smoking among pregnant women from 17 percent in 2009 to 15.1 percent in 2014.

Smoking rates among Native American youth were reduced from 43.9 percent in 2009 to 29.4 percent in 2014. Based on the youth risk behavior survey, statewide youth (grades 9 to 12) cigarette use declined from 22.4 percent in 2009 to 19 percent in 2014 and smokeless tobacco use declined from 15.3 percent in 2009 to 13.8 percent in 2014. However, youth who report trying e-cigarettes increased from 4.5 percent in 2011 to 13.4 percent in 2013.

Data from fiscal year 2013 indicates 31.2 percent of participants in the NDQuits program were abstinent from tobacco for 30 days or more at the time of the followup survey seven months after enrollment.

Collaboration

The North Dakota Center for Tobacco Prevention and Control Policy reported that the Center for Tobacco Prevention and Control Policy's management of tobacco prevention and control funds, because it is an entity separate from the State Department of Health, allows a focus on prevention in ways the State Department of Health cannot. The Center for Tobacco Prevention and Control Policy engages partners across the state to change public policy regarding tobacco and facilitate large-scale efforts through legislative action or ballot measures. Tobacco Free North Dakota is a statewide nonprofit organization based in Bismarck that, with the support of the Center for Tobacco Prevention and Control Policy, has engaged partners in the public and private sector who share a common interest in reducing tobacco use.

The North Dakota Center for Tobacco Prevention and Control Policy reported its mission is more narrow by law because it is required to follow CDC's *Best Practices for Comprehensive Tobacco Control Programs*. Best practices are supported by scientific evidence and are the most cost effective. Although the Tobacco Prevention and Control Executive Committee is pursuing best practices, promising practices, such as those administered by the State Department of Health, may have merit and should not be ignored.

The committee learned State Department of Health programs that could benefit from collaboration with the North Dakota Center for Tobacco Prevention and Control Policy include the tribal tobacco prevention and control program, the city-county employee cessation program, the PERS cessation program, and the Million Hearts Program. The State Department of Health and the Center for Tobacco Prevention and Control Policy plan a joint effort to establish baseline data to measure the prevalence of tobacco use on the reservations.

The committee learned the North Dakota Center for Tobacco Prevention and Control Policy and State Department of Health collaborate on a work plan to implement the state plan, which outlines which agency is lead on different objectives. The Center for Tobacco Prevention and Control Policy is working with the Indian Affairs Commissioner to build relationships with the tribes and to improve collaboration.

Other Information and Testimony

The committee received additional information and testimony from tribal representatives, local public health units, the Indian Affairs Commissioner, Tax Commissioner, and Tobacco Free North Dakota, relating to the comprehensive statewide tobacco prevention and control study, including:

- Cigarette sales volume increased 7.3 percent and tobacco revenue increased 11 percent, from $6.2 million to $7 million, from fiscal year 2013 to 2014.
- Based on reports received from tobacco wholesalers in the state, 1.5 million cigarettes were sold on reservations in the state during calendar year 2013. These sales were not taxed and accounted for 8.7 percent of all cigarettes sales in the state.
- The state tobacco tax remains one of the lowest in the nation. The cigarette excise tax is currently $2.83 in Minnesota, $1.70 in Montana, $1.53 in South Dakota, and $.44 in North Dakota.
- The state's overall tobacco prevention and control grade is low due to the state's low tobacco tax. Education programs work, but increasing the price is far more effective at preventing and reducing youth tobacco use. Nationwide, raising the tobacco tax by one dollar reduces youth smoking by 10 percent. Increasing the tobacco tax has also been shown to reduce tobacco use in lower socioeconomic populations.

Recommendation

The committee makes no recommendation as a result of its study of the comprehensive statewide tobacco prevention and control plan used in this state.

COMMUNITY PARAMEDIC STUDY

Senate Concurrent Resolution No. 4002 directed a study of the feasibility and desirability of community paramedics providing additional clinical and public health services, particularly in rural areas of the state, including the ability to receive third-party reimbursement for the cost of these services and the effect of these services on the operations and sustainability of the current EMS system.

Background

The committee reviewed previous studies relating to the state's EMS system, including studies by the 2007-08 interim Public Safety Committee of the state's EMS system, including the funding, demographics, and impact on rural areas and the 2009-10 Public Safety and Transportation Committee of emergency medical services funding within the state.

The Legislative Assembly in 2011 House Bill No. 1044 created Chapter 23-46 which requires the State Department of Health to establish and update biennially a plan for integrated EMS in the state.

The committee reviewed information received by the 2011-12 interim Health Services Committee regarding its study of EMS services. A rural EMS study conducted by SafeTech Solutions, LLP, identified the following challenges facing EMS in rural North Dakota:

- Lack of adequate rural, out-of-hospital EMS.
- Reliance on donations, local tax revenues, and volunteer labor.
- Increasing demand for services, primarily in western North Dakota.
- Need for specific training and environmental challenges.
- Aging population.

The 2011-12 interim Health Services Committee also received information from the State Health Officer 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. 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 reviewed information regarding EMS licensing, supervision, and training and certification. Chapter 23-27 provides the State Department of Health is the licensing authority for EMS operations and may designate their service areas. The Health Council is responsible for establishing rules for licensure. Section 23-27-04.4 allows certified or licensed emergency medical technician-intermediates and paramedics, who are employed by a hospital, to provide patient care within a scope of practice established by the State Department of Health. These EMS professionals are under the supervision of the hospital's nurse executive.

Pilot Project

Overview

The Legislative Assembly approved, in 2013 Senate Bill No. 2004, $276,600 from the general fund for 1 FTE position ($135,000) for the State Department of Health to implement a community paramedic/community health care worker pilot project and educational startup costs ($141,600) during the 2013-15 biennium.

The State Department of Health request for pilot project funding indicated the program would coordinate workers to utilize the downtime of paramedics between ambulance calls in order to assist community health workers. Community paramedics would deliver services, including assessments, chronic disease management, blood draws, diagnostic cardiac monitoring, fall prevention, and medication reconciliation in places such as homes, schools, and places of employment. Paramedicine exists in 17 states and 40 states are anticipated to implement the services in the next two years. Minnesota and Colorado are two of the states that offer community paramedic services.

The committee learned oversight and coordination of the pilot project was assigned to the Community Paramedic Subcommittee of the EMS Advisory Council.

Proposals to participate in the pilot project, including impact, utilization, effectiveness, delivery systems, and required funding, were solicited from licensed ambulance services. Four proposals were reviewed and approved--Heart of America Medical Center in Rugby, F-M Ambulance in Fargo, Southwest Health Systems in Bowman, and Billings County EMS in Belfield/Medora/Beach--additional proposals were pending from Carrington Health

Center/Ambulance and Essentia Health in Fargo. The project sites approved have a combined eight paramedics that have participated in training and five additional paramedics were to begin training in August 2014.

Training

The Community Paramedic Subcommittee and staff from the Division of Emergency Medical Services and Trauma reviewed draft curricula to identify training issues. Staff also developed evaluation metrics to assist in the evaluation of the success of the pilot project and the program. Community paramedic training is currently done through Hennepin Technical College in Minnesota and includes 196 hours of clinical training. The department anticipates training in the state could be provided by the state's higher education institutions. Nationally there is a movement for EMS providers to attain a bachelor's degree with the community paramedic receiving additional training. The School of Medicine, North Dakota State University (NDSU), North Dakota State College of Science, and Lake Region State College have all expressed interest in establishing a community paramedic program.

Licensing and Supervision

State Department of Health currently licenses all levels of EMS providers and the community paramedic licensure is an extension of the existing paramedic license for those individuals completing additional training. The community paramedic can practice under existing paramedic licensure and changing the community paramedic scope of practice is not necessary because it is defined by the practice environment and protocols are reviewed and approved by the physician medical director.

Referral sources include case management, care coordinator nurses, emergency department, primary care providers, and home health nurses.

There are currently no federal standards for community paramedics. In North Dakota certification is through the National Registry of Emergency Medical Technicians and licensure is by the State Department of Health. The national registry has not yet recognized the community paramedic, so there is currently no accrediting body. The department anticipates the national registry will address this new type of provider and develop a curriculum, but until then, states must develop their own standards.

The North Dakota Center for Nursing suggested the 2015 Legislative Assembly:

- Develop a scope of practice to better define the community paramedic's role and skill set and to include a provision for advanced practice registered nurses to also supervise community paramedics.
- Ensure that advanced practice registered nurses are able to supervise/delegate to community paramedics.
- Provide definitions and lines of reporting for accountability and a mechanism for documentation of care.

Services and Reimbursement

In addition to ambulance services, high-frequency users of emergency medical services also burden state and local law enforcement, fire departments, behavioral health professionals, and emergency departments. The current reimbursement model encourages transport because it is the only way the ambulance service is able to bill for services. Many of the frequent callers do not qualify for home health care, but if a community paramedic could visit on a regular basis, some calls could be avoided.

The Minnesota Legislature established funding sources for its community paramedic program through Medicaid. The state received federal approval to make community paramedic programs eligible for Medicaid reimbursement in February 2012. Covered services include health assessments, immunizations, chronic disease monitoring and education, collection of laboratory specimens, medication compliance checks, hospital discharge followup care, and minor medical procedures approved by a medical director.

The State Department of Health is reviewing options for third-party payers, including discussion with Blue Cross Blue Shield of North Dakota and the Department of Human Services.

To be authorized for reimbursement, the Department of Human Services recommends services be based on an individual care plan created by the primary care provider in consultation with the medical director of the ambulance service. Conditions for authorization of services could be limited to recipients of frequent hospital emergency department services; recipients for whom community paramedic services would likely prevent admission to, or would allow discharge from, a nursing facility; or recipients to prevent readmission to a hospital or nursing facility. Based on Medicaid coverage in other states, reimbursable services may include health assessments, chronic disease monitoring and education, medication compliance, immunizations and vaccinations, laboratory specimen collection, hospital discharge followup care, and minor procedures. Services must be coordinated with services from other community providers to prevent duplication. For North Dakota Medicaid to enroll and provide payment for services provided by

community paramedics, the Department of Human Services must submit, for federal approval, a state plan amendment to the federal Centers for Medicare and Medicaid Services. To bill for services, community paramedics would need to enroll as providers with North Dakota Medicaid.

Third-party payers expressed support for the overall goals and objectives of the community paramedic pilot program, and indicated they would consider reimbursement when a globally accepted scope of practice, national accreditation and curriculum standards, and Medicaid reimbursement are established; roles are defined so community paramedics complement local public health; outcomes data is available; they are able to internally establish a defined set of reimbursable services; and there is a demonstrated need by members.

Other Information and Testimony

The committee received other information and testimony from representatives of the North Dakota Nurse Practitioner Association, North Dakota Center for Nursing, ambulance services, third-party payers, pilot project participants, and other stakeholders. Key comments and information include:

- Essentia Health in Fargo implemented a community paramedic program on October 1, 2014. The community paramedic practices within the existing scope of practice.
- In a pilot project supported by Sanford Health, Fargo-Cass Public Health, Southeast Human Service Center, and F-M Ambulance, five paramedics have completed a portion of community paramedic training and are participating in targeted clinical internships in behavioral health, social work, case management, emergency medicine, medical detox, chronic illness management, and public health. A limited deployment of the community paramedics was to begin in September 2014.

Recommendation

The committee recommends Senate Bill No. 2043 to require the Department of Human Services adopt rules entitling licensed community paramedics to payment for health-related services provided to recipients of medical assistance, subject to limitations and exclusions the department determines necessary consistent with how limitations are set for other medical assistance services.

AUTOPSY FUNDING STUDY

Section 9 of Senate Bill No. 2004 directed a study of the funding provided by the state for autopsies and state and county responsibilities for the cost of autopsies, including the feasibility and desirability of counties sharing in the cost of autopsies performed by the State Department of Health and the School of Medicine and Health Sciences.

Background

The 1995 Legislative Assembly created a new section to Chapter 23-01 allowing the State Department of Health to perform autopsies and to employ a State Forensic Examiner to conduct investigations into cause of death. Chapter 11-19.1 requires, under most circumstances, each organized county to have a county coroner. The coroner, the coroner's medical deputy, the sheriff, or the state's attorney may direct an autopsy be performed. Section 11-19.1-11 provides the State Forensic Examiner or the State Forensic Examiner's authorized pathologist must perform the autopsy at a facility approved by the State Forensic Examiner. Except for the cost of an autopsy, investigation, or inquiry that results from the death of a patient or resident of the State Hospital or any other state residential facility or an inmate of a state penal institution and for the cost of an autopsy performed by the State Forensic Examiner, all costs with respect to the autopsy, the transporting of the body, and the costs of the investigation or inquiry are the responsibility of the county.

The committee learned the number of autopsies performed by the State Forensic Examiner has increased 64.8 percent--from 196 autopsies in 2004 to 323 autopsies in 2011. In addition, the number of consultations increased 48 percent--from 83 consultations in 2010 to 123 consultations in 2011. The department noted accreditation standards indicate one forensic examiner should perform 225 autopsies to 250 autopsies per year. The number of forensic autopsies performed by the department exceeded the number of autopsies recommended by the National Association of Medical Examiners in 2011. The department's 2013-15 budget request to the Governor proposed two options for addressing the increase in the number of autopsies performed by the State Forensic Examiner. One option was to contract with the School of Medicine to conduct medical examiner services for counties in the eastern part of North Dakota at an estimated cost of $640,000, and the other option was to add a pathologist and support services to the State Forensic Examiner's office at the department, including two autopsy assistants and laboratory testing at an estimated cost of $624,145.

The executive budget recommendation for the State Department of Health in Senate Bill No. 2004 provided $640,000 from the general fund for professional services to contract with the School of Medicine to perform autopsies in the eastern part of the state. The Legislative Assembly reduced the funding to provide a total of $480,000 of

one-time funding from the general fund and added a section to the bill to provide for a study of autopsy funding and state and county responsibilities for the cost of autopsies. In addition, the Legislative Assembly provided $1,360,585 to continue funding for existing forensic examiner staff (3 FTE positions) for a total of $1,840,585 from the general fund for autopsy services during the 2013-15 biennium.

Current System of Death Investigation

In North Dakota coroners are appointed by each county commission and the State Forensic Examiner provides expert consultation. A survey of counties found the duties of county coroner are performed by medical doctors (23 counties), sheriffs (13 counties), funeral directors (11 counties), registered nurses (3 counties), the medical school (1 county), a 911 coordinator/emergency manager, and a police chief.

A coroner investigates deaths that are the result of criminal or violent means, such as homicide, suicide, and accident; deaths of individuals who die suddenly when in apparent good health; or deaths of a suspicious or unusual manner. A coroner works closely with law enforcement to determine if a crime may have been committed and provides a particular medical perspective on the investigation. Issues of public health and safety, such as unusual contagious infections or deaths from environmental hazards, may be raised by a coroner or medical examiner. A coroner signs death certificates for those deaths investigated indicating the cause of death and manner of death, whether that be homicide, suicide, accident, natural causes, or undetermined. The State Forensic Examiner assumes jurisdiction over a dead body when requested to do so by a coroner or state's attorney. Because not all counties have a trained death investigator, not all deaths that warrant review may be investigated. If a coroner decides an autopsy is not necessary, the family may make arrangements for an autopsy and is responsible for the cost.

Professional medicolegal death investigation requires adequate resources and well-trained personnel. In addition to qualified personnel, adequate equipment and facilities are also a necessity. Counties often rely on local funeral homes for assistance in the handling and storage of deceased bodies. If a body requires examination in more detail or toxicology specimens, these procedures must be done in the funeral home's preparation rooms, raising concerns regarding the chain of custody of decedents. Because autopsies are not done in the county, arranging appropriate transportation to Bismarck and Grand Forks can also be an issue. Coroners work closely with local funeral homes and the ambulance services to coordinate care of the deceased individuals and transportation as needed.

The committee received information regarding the regions in which autopsies are originating, the demographics of those autopsied, regional gaps in autopsy services, the cost of an autopsy, and state and county responsibilities for the cost. In 2012 the most autopsies were performed in the west central region (83 autopsies), including 55 autopsies in Burleigh County. Among counties, Cass County performed the most with 58 autopsies. The fewest autopsies were performed in the southwest region (20 autopsies). While more forensic autopsies are performed on older adults aged 30 to 59, the number of autopsies among adults aged 20 to 29 has been increasing in the past two years. The number of forensic autopsies performed in North Dakota has been steadily increasing. A total of 240 forensic autopsies were performed in North Dakota in 2004, and in 2012, 434 autopsies were performed--an 80.8 percent increase over nine years.

Due to the increase in the workload of the State Forensic Examiner's office, the 2013 Legislative Assembly provided $480,000 of one-time funding from the general fund for the State Department of Health to contract with the School of Medicine and Health Sciences Department of Pathology to provide forensic consultations and autopsies for the eastern part of the state. The State Department of Health used $21,000 to purchase an autopsy table and the remaining $459,000 was contracted to the Department of Pathology at the School of Medicine to conduct all of the autopsies in eastern North Dakota. The contract has been in place since September 2013 and three forensic pathologists at the School of Medicine perform autopsies at a morgue facility recently constructed in Grand Forks. During fiscal year 2014, the School of Medicine will perform autopsies for 13 eastern counties, and during fiscal year 2015, an additional 8 counties will send bodies to the School of Medicine for autopsies. The contract resulted in 29 fewer autopsies being performed by the State Forensic Examiner during the first quarter of 2014.

During the 2011-13 biennium, 764 autopsies were performed by the State Department of Health. Actual expenditures for the 2011-13 biennium were $1,395,243, and the cost per autopsy for the biennium was $1,826. As required in Section 11-19.1-18, counties are responsible for the cost of transporting the body to the morgue in Bismarck and other costs associated with the investigation or inquiry into the death, but the state pays all of the costs to conduct the autopsy, which consists of staff, medical supplies, and laboratory testing.

County Autopsy Costs

Prior to the creation of the State Forensic Examiner's office in 1995, counties were responsible for death investigations. Increasing costs to counties and a desire to remove the perceived disincentive to requesting necessary autopsies and to increase consistency and professionalism led to legislation to shift part of the cost of conducting autopsies to the state. The shared responsibility acts as both an incentive and a disincentive to refer cases. The cost

of local coroners and transportation of the bodies for autopsy provides for a balance. There is concern that if counties were required to pay for autopsies, there would be more of a disincentive to refer cases.

Counties spent $622,399 of property tax revenue in calendar year 2013 for coroner and autopsy services and have budgeted $722,759 for calendar year 2014. Statewide in 2013, approximately 78 percent of those costs were related to coroner fees, 18 percent were for body transport, 2 percent were for autopsy fees (Grand Forks County $10,609 and Cass County $2,000), and 2 percent were for supplies and other costs. Prior to the 2013-15 biennium, Grand Forks County paid for the cost of autopsies from Grand Forks County performed at the medical school, rather than sending bodies to the State Forensic Examiner. Grand Forks County has budgeted $11,000 for autopsy fees during calendar year 2014.

Some counties pay the coroner by case, while others budget for annual contracts for services and salaries. Other costs include transportation, toxicology, supplies, and other expenses of the office. The University of North Dakota Pathology Department sends qualitative and quantitative testing to out-of-state laboratories and the cost of the testing is included in the autopsy fee. The State Department of Health receives qualitative testing services from the State Crime Laboratory and sends positive qualitative tests to an out-of-state laboratory for quantitative analysis. In some cases law enforcement may pay laboratories for quantitative toxicology services.

The State Department of Health contract with the School of Medicine and Health Sciences for conducting autopsies has resulted in transportation cost-savings for counties.

Medicolegal Death Investigation System Funding Models

The committee received information regarding possible funding models for death investigation. The committee learned the per capita model may be appropriate for smaller counties because costs may influence autopsy decisions in the "fee-for-service" model. Cases should be investigated based on the merit of the case, not funding available.

The committee received information regarding a pure state model versus a pure county model of death investigation and forensic pathology. North Dakota is currently a hybrid model.

In a pure state model, the state is responsible for the entire system. This model is generally used in geographically small states. There is generally a single, centrally located office, and all personnel involved in death investigation are from the state office. Advantages and disadvantages of the pure state model include:

Advantages:

- Specialization of services, more physicians, more staff, more specialized equipment possible such as CT scanners, MRIs, neuropathologists, pediatric pathologists, etc.
- Counties do not provide services or financial support.
- Generally most economical for small geographic states.
- Clear delineation and required independence from judicial and law enforcement branches.

Disadvantages:

- Border and geographic issues.
- Reduced county and local accountability.
- Tends not to follow medical referral lines, difficulties with records, trauma reporting, etc.
- May have significant transportation expenses and access issues.
- May not be responsive to local issues and needs.

In the pure county model, each county is responsible for its own system. This model is most effective in counties with a population in excess of one million people. Advantages and disadvantages of the pure county model include:

Advantages:

- Most responsive to local constituents (family, law enforcement, hospitals, trauma committees, etc.).
- Flexible model with staffing and cases.
- Follows natural medical referral lines already in existence.

Disadvantages:

- Fragmentation within an area and a state possible. Significant differences in services and quality within a state.
- Often large discrepancies in services and investigations across county lines.
- Limited coordination of public health and other data to the state.
- Generally more difficult to ensure quality assurance and control initiatives.
- May not have independence from law enforcement or judicial systems.
- Not possible for small and rural counties.

Recommendations for Improvements to the Medicolegal Death Investigation System in the State

Medicolegal death investigation provides a service to families and benefits law enforcement and public health. Although the role of forensic death investigation is often associated with criminal justice, a greater role is played in public and population health. The sharing of knowledge and education benefits practitioners, clients, regulators, and future generations. Certification and accreditation are fundamental to the public health system. Accreditation through the National Association of Medical Examiners assures the public that the office of the medical examiner has the proper facilities, policies, and procedures to perform modern, scientific death investigations. There are currently no accredited facilities for forensic autopsies in the state, however the School of Medicine is endeavoring to become accredited.

The committee learned if judicial and public health missions of the medicolegal death investigation system are met in a manner which accomplishes full accreditation of the system, the metric of number of autopsies needed per population base is constant at one autopsy per 1,000 of population. The concept of regional medical examiners could expand services in North Dakota but would require adding an examiner's office in the western part of the state. The appropriate goal for travel times to autopsy facilities is generally less than 120 minutes.

The State Forensic Examiner's office collaborated with counties and other stakeholders to develop recommendations for a system approach to death investigation and recommendations for the framework of a regional death investigation system and for the establishment and implementation of statewide standards for death investigation. The committee received the following recommendations for improvement to the medicolegal death investigation system in the state:

- Maintain a manageable workload at the State Forensic Examiner's office in Bismarck. The group recommends the State Department of Health receive continued funding to maintain the contractual agreement between the department and the School of Medicine and Health Sciences for forensic autopsy services.
- Provide authority to the State Forensic Examiner to review nonnatural deaths and amend the cause and manner of death if necessary. The State Department of Health anticipates this could be accomplished through a change to the North Dakota Administrative Code.
- Develop a system to prompt health care providers to consult with the local coroner in all deaths that are not natural deaths. The State Department of Health is developing a component in its electronic death certificate system for this.
- Allow copies of toxicology reports generated by the State Crime Laboratory to be sent to the State Forensic Examiner. The State Department of Health anticipates this can be implemented by the State Crime Laboratory.
- Increase the number of people in the state trained in death scene investigation. Increase and improve the knowledge and skills of coroners, death investigators, and others who may conduct death investigations or assist in death investigations, including a mechanism to offset travel costs for the training of coroners. The department estimated this initiative would require an appropriation of $29,375. In addition, scholarships to assist in travel costs for five county coroners per year to attend training provided by the Hennepin County Coroner in Minnesota on death investigations would require an additional appropriation of $10,000.
- Develop the capacity of the State Crime Laboratory to produce quantitative toxicology results. Currently, the laboratory can provide only qualitative results. The State Forensic Examiner sends samples for qualitative drug and toxicology testing to the State Crime Laboratory. Those samples in which drugs or toxins are detected are then sent to NMS Labs in Pennsylvania for quantified analysis. The cost for the State Forensic Examiner's office, the University of North Dakota Pathology Department, and all county coroners to contract for forensic quantitative toxicology testing by an out-of-state laboratory is estimated to total $93,855 for the biennium. The estimated cost of implementing quantitative toxicology analysis at the State Crime Laboratory is $437,028, including 2 FTE positions ($178,514 each) and related operating costs ($80,000). The Attorney General anticipates adding the quantitative toxicology analysis in the future when it is determined the additional analysis will not cause delays in current screening services. Implementing quantitative toxicology analysis without additional resources will delay current screening results.

- Allow the State Forensic Examiner and School of Medicine and Health Sciences Department of Pathology to review death records electronically and allow these entities to send the electronic record to other medical providers for further review or correction. The Division of Vital Records at the State Department of Health anticipates working with the Information Technology Department to make the necessary modifications. The modifications are estimated to cost between $10,000 and $20,000. The authority for the State Forensic Examiner could be accomplished with a rule change.
- Develop a mass fatality response plan for the state.

The committee learned future study of the long range plan for medicolegal death investigation should continue to formulate recommendations for improvements to the state's medicolegal death investigation system. Other issues to be addressed may include:

- Facilities in Bismarck and Grand Forks - Including control or ownership of the forensic facility in Grand Forks, imaging equipment, biosafety, and disaster planning.
- Education and training of investigators and first responders.
- Financing and cost-sharing.
- Plan for national accreditation of all forensic facilities in the state.
- Design and implementation of a plan for training and distribution of qualified and certified medicolegal death investigators for all regions of North Dakota.
- Governance - In some models, governance of the death investigation system is independent of any state department and may be governed by a commission which includes various health department administrators, academics, and law enforcement professionals.

Other Information and Testimony

The committee received additional information and testimony relating to the autopsy funding study from representatives of the North Dakota Association of Counties, the Cass County Coroner, University of North Dakota School of Medicine and Health Sciences Department of Pathology, and the Attorney General's office, including:

- A summary of county costs incurred for social services programs. The North Dakota Association of Counties compiled information provided by the Tax Commissioner, Department of Human Services, and county auditors to prepare summaries of fiscal year 2013 social service expenditures and reimbursements and calendar year 2014 county-dedicated mills and general fund allocations for social services programs. County social service costs increased $6.1 million--or 14 percent--from fiscal year 2012 to fiscal year 2013. Net county social service costs for state fiscal year 2013 totaled $50.5 million. Calendar year 2014 county budgets include approximately $57 million in local revenue for social services.
- A new coroner's office and county morgue authorized by the Cass County Commission.

Recommendation

The committee recommends House Concurrent Resolution No. 3004 directing the Legislative Management to continue to study medicolegal death investigation in the state and how current best practices, including authorization, reporting, training, certification, and the use of information technology and toxicology, can improve death investigation systems in the state.

The committee recommends House Bill No. 1042 to provide appropriations to the State Department of Health for information technology costs related to the electronic review of death records and for the reimbursement of travel costs related to county coroner training and the planning of future coroner services in the state.

MANDATED HEALTH INSURANCE COVERAGE COST-BENEFIT ANALYSIS

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 2015 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, 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 Insurance Commissioner has budgeted $20,000 to pay the costs of the contracted services for the 2015 legislative session, $5,000 more than the amount provided for the 2013 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. There were no health insurance mandates referred for cost-benefit analysis during the 2013 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 six legislative sessions. The 2003-04 and 2005-06 interim Budget Committees on Health Care, the 2007-08 interim Human Services Committee, the 2009-10 interim Health and Human Services Committee, and the 2011-12 interim Health Services Committee recommended the Insurance Department contract with Milliman USA for cost-benefit analysis services on health insurance mandates during the 2005, 2007, 2009, 2011, and 2013 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. 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. There were no mandates proposed during the 2007 and 2013 legislative sessions.

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 64th Legislative Assembly.

Recommendations

The committee recommends the Legislative Council contract with Milliman, Inc., for cost-benefit analyses of legislative measures considered by the 64th 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 $120,000 during the 2011-13 biennium, and contract expenditures totaled $25,352. As of June 30, 2013, the balance in the reduced cigarette ignition propensity and Firefighter Protection Act enforcement fund was $313,960.

The committee received a report from the State Fire Marshal. Pursuant to Chapter 18-13, any cigarette made available and distributed by wholesalers to retail outlets in the state must be tested in accordance with the American Society of Testing of Materials standard and meet the ignition propensity safety standards for all cigarettes. The committee learned 734 manufacturer brand styles are sold in the state and all are certified and recertified every three years. The State Fire Marshal's office conducts random checks on retail outlets for brand or trade name on the package, cigarette style, Fire Safer Cigarette stamp, and whether the cigarette has been certified and approved for sale in North Dakota. The committee learned that although the number of fires caused by cigarettes over the past five years in North Dakota has increased, the state benefits from the overall program to require only certified low propensity ignition cigarettes be sold in the state. The State Fire Marshal recommended no changes to Chapter 18-13.

REPORT ON PLANS TO REDUCE THE INCIDENCE OF DIABETES IN THE STATE, IMPROVE DIABETES CARE, AND CONTROL COMPLICATIONS ASSOCIATED WITH DIABETES

The Legislative Assembly in 2013 approved House Bill No. 1443 which requires the Department of Human Services, State Department of Health, Indian Affairs Commission, and PERS collaborate to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes. Section 1 of the bill requires before June 1 of each even-numbered year, the Department of Human Services, State Department of Health, Indian Affairs Commission, and PERS submit a report to the Legislative Management on the following:

a. The financial impact and reach diabetes is having on the agency, the state, and localities. Items included in this assessment must include the number of lives with diabetes impacted or covered by the agency, the number of lives with diabetes and family members impacted by prevention and diabetes control programs implemented by the agency, the financial toll or impact diabetes and diabetes complications places on the agency's programs, and the financial toll or impact diabetes and diabetes complications places on the agency's programs in comparison to other chronic diseases and conditions.

b. An assessment of the benefits of implemented programs and activities aimed at controlling diabetes and preventing the disease. This assessment must document the amount and source for any funding directed to the agency from the legislative assembly for programs and activities aimed at reaching those with diabetes.

c. A description of the level of coordination existing between the agencies on activities, programmatic activities, and messaging on managing, treating, or preventing diabetes and diabetes complications.

d. The development or revision of detailed action plans for battling diabetes with a range of actionable items for consideration by the legislative assembly. The plans must identify proposed action steps to reduce the impact of diabetes, prediabetes, and related diabetes complications.

The plan must identify expected outcomes of the action steps proposed in the following biennium while also establishing benchmarks for controlling and preventing relevant forms of diabetes.

e. The development of a detailed budget blueprint identifying needs, costs, and resources required to implement the plan identified in subdivision d. This blueprint must include a budget range for all options presented in the plan identified in subdivision d for consideration by the legislative assembly.

The committee was assigned the responsibility to receive this report.

The committee received a report from the Department of Human Services, State Department of Health, Indian Affairs Commission, and PERS. The number of individuals in the state diagnosed with diabetes has increased more than 2.5 times over the past 16 years, and in 2007, diabetes cost the state over $400 million. The committee received information regarding programs related to diabetes prevention and management at the State Department of Health, Department of Human Services, and PERS. Although the agencies included in the report have individual plans, they agree a collaborative effort is necessary to reduce and manage diabetes in the state. Goals and strategies to reduce diabetes in the state include:

1. Increase the availability and utilization of evidence-based lifestyle change programs, such as the National Diabetes Prevention Program, by training more Diabetes Prevention Program lifestyle coaches, providing new and existing sites with technical assistance, and working with providers to develop a referral system for these programs.
2. Increase the availability and utilization of sustainable, evidence-based diabetes and chronic disease self-management education programs, implement other health education or behavior change initiatives, work with existing diabetes and chronic disease self-management education sites to establish a better referral system, and coordinate with providers serving a high percentage of diabetes patients to offer an accredited diabetes and chronic disease self-management education program.
3. Support local communities that have prioritized programs which encourage obesity or chronic disease management and physical activity by offering community grants.
4. Support existing diabetes-related state health promotion plans, coalitions, and partnerships by offering support, information, and training to communities.
5. Improve diabetes and chronic disease surveillance systems to determine the extent and impact of diabetes on North Dakotans by identifying, collecting, storing, and analyzing relevant data.
6. Support policies that improve outcomes for persons with and at risk for diabetes by identifying successful strategies from other states and programs and applying them to North Dakota.

REPORT ON THE UNIVERSITY SYSTEM STUDY OF PROFESSIONAL STUDENT EXCHANGE PROGRAMS

The Legislative Assembly approved 2013 Senate Bill No. 2160 which requires the University System to study the out-of-state programs in veterinary medicine, optometry, and dentistry. The study must include the accessibility of North Dakota students to the programs; the provision of state funding for students attending the programs; the amount of debt incurred by students attending the programs; and the state's short-term and long-term needs for dentists, optometrists, and veterinarians. Section 1 of the bill requires the University System to report its findings to the Legislative Management by November 15, 2013. The committee was assigned the responsibility to receive this report.

Professional Student Exchange Program

The professional student exchange program (PSEP) provides access to professional programs not offered in the state in veterinary medicine, dentistry, and optometry. Since 2008, the number of applicants in the three professions available through PSEP has averaged 61 students per year and 37.8 percent of the applicants were in veterinary medicine, 38.6 percent were in dentistry, and 23.6 percent in optometry. During the 2013-14 school year, 20 new slots were funded, of which 10 were funded in veterinary medicine, 3 in optometry, and 7 in dentistry. Some slots were not filled, either because there were not enough applicants or because applicants were not eligible and the University System is reviewing the possibility of reallocating unused funding to provide additional slots in another profession.

The PSEP budget for the 2013-15 biennium is approximately $4.5 million, of which $3.8 million is from the general fund, $465,307 is from the student loan trust fund, and $186,532 is available from carryover. The carryover resulted from optometry and veterinary slots that were not filled for the 2012-13 school year.

The committee received information regarding funding per student provided for participants in PSEP. During the 2013-14 school year, PSEP is providing funding for 40 veterinary, 28 dentistry, and 26 optometry students. Within

Western Interstate Commission for Higher Education (WICHE), veterinary students receive approximately $30,600 per student, dentistry students receive $23,900 per student, and optometry students receive $16,400 per student. Non-WICHE students receive $17,930 per student for dentistry students and from $11,226 to $26,059 per student for veterinary students.

University System Report

The committee received a report from the University System regarding the results of a survey of the graduates of PSEP and a report on out-of-state programs in veterinary medicine, optometry, and dentistry. The professional student exchange program provided funding for 192 students from 1999 through 2010 and currently 94 students are participating in PSEP. A survey of PSEP alumni who graduated from professional studies in veterinary medicine, optometry, and dentistry from 2003 through 2013 was conducted in fall 2013. Of the 192 graduates, 159 were surveyed and 40 percent (63 graduates) responded. Surveys returned included 14 dental professionals, 20 veterinarian professionals, and 29 optometry professionals. Seventy-one percent of the dental professionals responding to the survey practice in North Dakota, while 45 percent of the veterinarians and 28 percent of the optometrists responding to the survey practice in the state.

Based on estimated tuition and fees for the 2013-14 school year, tuition support provided by PSEP ranged from 23.2 percent in the dentistry program at the University of Minnesota to 57.5 percent in the veterinary program at Kansas State University. Students attending the University of Minnesota in the veterinary and dentistry programs are subsidized at a lower rate than those attending WICHE and other schools.

Nationally the average student debt of veterinary graduates is $162,113, the debt of dentistry graduates is over $221,000, and the debt of optometry graduates ranges from $150,000 to $200,000. Based on the University System survey, most of the PSEP graduates in each profession reported debt as follows:

- Veterinary students' debt ranged from $75,000 to $150,000;
- Dentistry students' debt ranged from $150,000 to $250,000; and
- Optometry students' debt ranged from $100,000 to $150,000.

Nationally, the average starting salary of a veterinarian is $48,674, while a dentist's starting salary ranges from $145,240 to $150,223 and an optometrist's starting salary ranges from $65,000 to $120,000.

It is anticipated the workforce needs of PSEP professions will grow over the next seven years due to an aging workforce, the needs of an aging population, and the Affordable Care Act. The state is experiencing distribution issues with all of the PSEP professions. Survey respondents indicated that rural areas of the state lack the volume needed to make a practice profitable. Respondents also expressed the desire for a diverse practice that allowed for specialization.

Based on data collected by WICHE, which includes both states with payback features and without payback features, the average return rate over a 10-year period was 68 percent. The return rate for states which employ a contractual payback feature is 85 percent, while the return rate of PSEP participants to North Dakota is 31 percent. University System survey data also indicated most of the PSEP graduates were licensed and practicing in the Midwest and Upper Midwest. Reasons for not returning, among respondents not practicing in North Dakota, included lack of job opportunities at the time of graduation, the financial strain of debt, family, and personal choice. Of the University System survey respondents, 71 percent indicated that, even if students were required to pay back the PSEP assistance if they did not return to the state to practice, they still would have applied for PSEP. The North Dakota PSEP previously included a payback feature and the return rate to North Dakota up to 1983 (when the repayment requirement was repealed) was 50 percent. The University System reported 5 of the 11 states that participate in the WICHE require more than one year to establish residency for the program. If a payback feature is implemented for those graduates of PSEP that do not return to the state, the residency requirement may not be as significant. North Dakota is one of four WICHE states that do not require a service payback as part of PSEP.

The committee learned eliminating PSEP support and converting the program to a loan forgiveness program would jeopardize the slots currently reserved for North Dakota applicants.

The University System recommended the following considerations for the University System, professional state associations, and the Legislative Assembly:

- Improve the PSEP application process and communication;
- Develop a reliable reporting system to determine future workforce needs and encourage professional associations to develop comprehensive mentoring and recruiting plans for students throughout their education;

- Consider PSEP eligibility guidelines to lower the possibility of an out-of-state student establishing minimal residency parameters for purpose of gaining access to PSEP funding, and
- Consider PSEP service payback structure options. If a service payback program is deployed, the University System anticipates collaborating with the Bank of North Dakota to administer the program. If a payback feature were implemented, considerations should include:

  Administrative costs and burden;

  Loan terms and conditions;

  Creating or increasing rural or underserved incentives;

  Job availability in the state;

  Startup assistance available to new graduates;

  Affordability of living and working in rural and underserved areas;

  Use of funding repaid by nonreturning students to further promote educational incentives;

  Funding estimated to be paid back;

  Life choices of students after graduation;

  Justification of a payback feature for all programs;

  Equity among all professional programs receiving state support;

  Effects of the Affordable Care Act on dental and optometry practices.

Other Information and Testimony

The committee received additional information and testimony relating to professional programs from representatives of the North Dakota Dental Association, North Dakota Optometric Association, North Dakota Veterinary Medical Association, NDSU, North Dakota Veterinary Technician Association, and the North Dakota Stockmen's Association, including:

- The distribution of dentists in the state and the appropriate number of dentists in a population. Nationally, the ratio is one dentist per 1,612 residents and in North Dakota the ratio of dentists to population is approximately one dentist per 1,750 residents. This ratio compares favorably with South Dakota (1:1,890) and Iowa (1:1,825) but not with Minnesota (1:1,630). North Dakota's growing economy has brought more dentists to the state to practice and the number of licenses issued by the State Board of Dental Examiners has been steadily increasing. The favorable ratio of dentists to population seems to indicate the state does not have a shortage of dentists but rather a misdistribution of dentists around the state.
- The distribution of optometrists in the state, the appropriate number of optometrists in a population, and whether there is a shortage of optometrists in the state. There are 175 practicing optometrists in the state. Of the 150 members of the North Dakota Optometric Association, 59 percent are in private practice (100 percent ownership), 24 percent are employed by a hospital or ophthalmology clinic, and 17 percent are practicing independently but lease space and equipment from a corporate entity. There is currently no shortage of optometrists in the state, but 30 percent of the North Dakota Optometric Association membership is likely to retire in the next 10 years.
- National standards for the number of veterinarians and the distribution of veterinarians in the state. The North Dakota Veterinary Medical Association does not believe there is a shortage of veterinarians in the state. Areas of the state, particularly the western counties, struggle to keep a full-time veterinarian available because animal numbers are low. Shortages of food animal veterinarians are due primarily to the high cost of education, physically demanding work, long hours, and lower pay relative to small animal veterinary work. In addition, federal programs and the increased complexity of pharmaceuticals and biological product use requiring veterinarian supervision have expanded the role of veterinarians in food animal operations in recent years. Federal programs, such as the United States Department of Agriculture's Animal and Plant Health Inspection Service's animal disease traceability program, now require additional processes at every stage in the production cycle, further increasing the demand for veterinary services. In 2013 the American Veterinary Medical Association suggested an adequate number of veterinarians was 32.15 per 100,000 in population, or approximately 225 veterinarians for a population of 700,000. There are 250 practicing veterinarians in the state.
- The veterinary technology program, the ability of veterinary technicians to practice at the top of their scope of practice and the potential for an expanded role for veterinary technicians--especially in the area of large food animal services. North Dakota State University has two programs related to veterinary activity. The veterinary technology program is a four-year academic program to train veterinary technicians for industry and the

Veterinary Diagnostic Laboratory is a service laboratory in the Agricultural Experiment Station in Fargo. The laboratory provides information to veterinarians, owners, and livestock producers regarding injury or death of animals and livestock. Up to 28 students are accepted into the veterinary technology program each year and the services veterinary technicians are allowed to perform are identified in Section 43-29-12.1. Most services require the direct supervision and control of a licensed veterinarian. Technology may make it possible to provide appropriate supervision for some duties.

- The direct cost of educating other health care professionals in the state. During the 2013-14 school year the cost of educating a pharmacy student at the College of Pharmacy, NDSU, is $20,811, of which $11,262, or 54 percent is provided from the general fund with the remainder provided by tuition and grants. The direct cost per student at the School of Medicine for the same year is $82,796, of which $56,870, or 69 percent is provided from the general fund. General fund support for students enrolled in other health sciences degree programs is approximately 52 percent.

Committee Considerations

The committee considered but did not recommend a bill draft relating to the repayment of tuition assistance provided through professional student exchange programs if the participant does not return to the state to practice.

OTHER INFORMATION RECEIVED

Survey of Agency Alcohol, Drug, Tobacco, and Risk-Associated Behavior Prevention and Treatment Programs

The committee received a report entitled *Survey of Agency Alcohol, Drug, Tobacco, and Risk-Associated Behavior Prevention and Treatment Programs*. In January 2014 agencies completed a survey of their prevention and treatment programs for risk-associated behavior for the 2011-13 biennium and budgeted information on the 2013-15 biennium. Agencies reported a total of $148.4 million is budgeted for risk-associated programs during the 2013-15 biennium, $26.2 million more than the $122.2 million spent during the 2011-13 biennium. Expenditures from the general fund are anticipated to increase $10.7 million from the 2011-13 biennium total of $53.3 million to an estimated $64 million during the 2013-15 biennium.

HIGHER EDUCATION FUNDING COMMITTEE

The Higher Education Funding Committee was assigned the following responsibilities:

1. A study pursuant to Section 39 of 2013 Senate Bill No. 2018 of the intellectual property policies and procedures at research institutions in the state, including consideration of the current and potential income generated through the commercialization of intellectual property, consideration of the best practices related to intellectual property, and related federal Bayh-Dole and Patent Reform Acts. The Judiciary Committee, by a directive of the Chairman of Legislative Management, also studied intellectual property policies and procedures.
2. A study pursuant to Section 3 of 2013 Senate Bill No. 2200 of higher education funding methods, including options to implement a funding method that is not based on existing levels of funding at institutions. As part of the study, the committee was to consult with representatives of the State Board of Higher Education, the North Dakota University System office, higher education institutions, and other appropriate entities. The section also identified specific areas that were to be reviewed as part of the study.
3. A study pursuant to 2013 House Concurrent Resolution No. 3009 of the use of open textbooks in the University System, including options to develop partnerships with other states to use open textbooks.
4. Receive a report 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 state longitudinal data system.
5. Receive a biennial report from the University of North Dakota 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 grant under Chapter 15-70 detailing grant expenditures and recipient demographics.
8. Receive periodic reports from the State Board of Higher Education of status updates on the progress of the board implementing and administering Chapter 15-18.1 regarding authorization to operate postsecondary education institutions in the state.
9. Receive a report from the State Board of Higher Education regarding the distribution of funds from the performance funding pool authorized in 2013 Senate Bill No. 2003.
10. Receive a report from the State Board of Higher Education prior to October 1, 2014, regarding the award of matching grants for the advancement of postsecondary academies.
11. Approve changes by the State Board of Higher Education to the adjusted student credit-hour funding method delineations in establishing instructional program classification factors to reflect a nationally recognized and standardized instructional program classification system.

Committee members were Representatives Mark Sanford (Chairman), Thomas Beadle, Lois Delmore, Mark A. Dosch, Eliot Glassheim, Kathy Hawken, Joe Heilman, Dennis Johnson, Andrew G. Maragos, Bob Martinson, Kylie Oversen, Robert J. Skarphol, and Clark Williams and Senators Tim Flakoll, Tony Grindberg, Ray Holmberg, Karen K. Krebsbach, Carolyn C. Nelson, and Larry J. Robinson.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th 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, at times, gathered input through the use of a Higher Education Roundtable, which consisted 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.

From the 1999-2000 interim through the 2009-10 interim, the Higher Education Committee has recommended a number of bills for consideration by the Legislative Assembly. The bills approved 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 to be included in the University System performance and accountability report required pursuant to Section 15-10-14.2. The 2011-12 interim recommended 2013 Senate Bill No. 2032 to implement certain accountability measures for the University System. However, the bill failed to pass.

HIGHER EDUCATION STUDY

The committee was assigned the following studies relating to higher education:

1. Section 39 of 2013 Senate Bill No. 2018 provided for a study of the intellectual property policies and procedures at research institutions in the state, including consideration of the current and potential income generated through the commercialization of intellectual property, consideration of the best practices related to intellectual property, and related federal Bayh-Dole and Patent Reform Acts. The Judiciary Committee, by a directive of the Chairman of Legislative Management, also studied intellectual property policies and procedures.
2. Section 3 of 2013 Senate Bill No. 2200 provided for a study of higher education funding methods, including options to implement a funding method that is not based on existing levels of funding at institutions. As part of the study, the committee was to consult with representatives of the State Board of Higher Education, the North Dakota University System office, higher education institutions, and other appropriate entities. The section also identified specific areas that were to be reviewed as part of the study, including tuition, unique institution needs, remedial education and dual-credit course completions, facility needs, and administrative costs.
3. House Concurrent Resolution No. 3009 (2013) provided for a study of the use of open textbooks in the University System, including options to develop partnerships with other states to use open textbooks.

University System Information

The University System consists of 11 higher education institutions under the control of the State Board of Higher Education. Of the 11 institutions, two are doctoral-granting institutions, two are master's-granting institutions, two are universities that offer baccalaureate degrees, and five are colleges that offer associate and technical degrees.

Legislative appropriations for the 2013-15 biennium for higher education institutions and the University System office total $1,075,110,856, of which $902,629,915 is from the general fund. The following is a history of higher education legislative appropriations since the 1997-99 biennium:

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	$165,419,701	$637,455,938
2009-11	$593,355,047	$202,764,364	$796,119,411
2011-13	$657,838,539	$108,817,759	$766,656,298
2013-15	$902,629,915	$172,480,941	$1,075,110,856

NOTE: The special funds amounts for the 1997-99 biennium reflect the appropriation of tuition income and the 1999-2001 biennium special funds amounts reflect the appropriation of tuition and local funds.

The following is a summary of ongoing and one-time general fund appropriations for the University System since the 2007-09 biennium:

Biennium	General Fund Appropriations		
	Ongoing Appropriations	One-Time Appropriations	Total
2007-09	$443,654,169	$28,382,068	$472,036,237
2009-11	$534,062,895	$59,292,152	$593,355,047
2011-13	$606,525,437	$51,313,102	$657,838,539
2013-15	$679,271,846	$223,358,069	$902,629,915

The University System reported a total degree credit headcount enrollment of 48,015 students and a total degree credit full-time equivalent (FTE) enrollment of 38,326 students in the fall 2013 enrollment report. The following is a summary of University System degree credit headcount and FTE fall enrollments for 2004 through 2013:

Fall Headcount Student Enrollment[1]										
Institution	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Bismarck State College	3,546	3,370	3,477	3,591	3,788	4,020	4,177	4,392	4,109	4,062
Dickinson State University	2,479	2,516	2,572	2,670	2,730	2,767	2,485	2,346	1,837	1,449
Lake Region State College	1,464	1,471	1,508	1,520	1,657	1,702	1,913	2,056	1,974	1,898
Mayville State University	897	912	832	769	789	887	982	970	1,020	1,065
Minot State University	3,851	3,798	3,712	3,424	3,432	3,649	3,866	3,657	3,560	3,533
Dakota College at Bottineau	602	523	605	637	655	748	863	812	774	793
State College of Science	2,481	2,457	2,490	2,417	2,545	2,651	2,833	3,127	3,066	3,168
North Dakota State University	12,026	12,099	12,258	12,527	13,229	14,189	14,407	14,399	14,443	14,629
University of North Dakota	13,187	12,954	12,834	12,559	12,748	13,172	14,194	14,697	15,250	15,143
Valley City State University	1,033	1,035	1,037	982	1,019	1,083	1,285	1,384	1,362	1,366
Williston State College	937	947	912	731	850	949	932	993	808	909
Total	42,503	42,082	42,237	41,827	43,442	45,817	47,937	48,833	48,203	48,015

[1]Headcount enrollment includes all students enrolled at an institution regardless of the number of credit-hours the student is enrolled in.

Fall Full-Time Equivalent Student Enrollment[1]										
Institution	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Bismarck State College	2,800	2,602	2,651	2,792	2,937	3,160	3,208	3,209	2,990	2,955
Dickinson State University	2,034	2,031	2,059	2,158	2,294	2,187	2,054	1,959	1,454	1,201
Lake Region State College	738	738	750	764	784	868	921	988	973	943
Mayville State University	761	722	652	586	563	662	704	704	759	749
Minot State University	3,022	3,063	2,928	2,730	2,720	2,832	3,002	2,795	2,731	2,710
Dakota College at Bottineau	447	386	399	402	440	490	540	524	474	502
State College of Science	2,271	2,223	2,171	2,097	2,041	2,076	2,217	2,366	2,354	2,295
North Dakota State University	10,692	10,752	10,890	11,221	11,794	12,577	12,708	12,606	12,707	12,797
University of North Dakota	11,815	11,531	11,381	10,967	11,137	11,306	12,018	12,319	12,729	12,606
Valley City State University	956	899	844	807	824	833	957	1,011	995	975
Williston State College	709	702	648	551	562	573	570	608	537	593
Total	36,245	35,649	35,373	35,075	36,096	37,564	38,899	39,089	38,703	38,326

[1]In order to be more consistent with common practice in enrollment reporting, the State Board of Higher Education changed the definition of undergraduate FTE to 15 credit-hours from 16 credit-hours in August 2006. In order to provide a consistent basis for comparing 2006 enrollments to prior years, the prior year FTE enrollments have been recalculated based on the new definition. The FTE enrollment of an institution is calculated by dividing undergraduate student credit-hours by 15 and by dividing graduate student credit-hours by 12. Full-time professional students are counted as 1 FTE enrollment.

Intellectual Property

Overview

Intellectual property is a property right that is recognized by law and can be bought and sold similar to tangible property. The three main types of intellectual property include:

- Copyrights - Protect original artistic expressions in a tangible medium.
- Patents - Protect inventions.
- Trademarks - Protect brand identity, names, and logos.

A copyright provides an original author or authors with the right to reproduce and distribute an original work product, such as a textbook or computer software. The ownership of a copyright is generally retained by the creator unless specified otherwise through an employer agreement.

A patent is a right granted by the federal government to exclude others from practicing the invention during a limited timeframe. It may take up to five years to receive a patent, and the costs of getting an invention patented can be significant. A patent may be owned by one or more inventors, and ownership is generally shared equally if there is more than one inventor unless specified otherwise through a contract, agreement, or policy.

A trademark or service mark is a recognizable word, name, design, or combination which identifies a product or service. A registered trademark provides exclusive rights to the registered owner to use the trademark in relation to the service or product provided.

Research Institutions

The committee learned the core mission of a research institution is to teach, to provide outreach, and to conduct research. Research-related activities have a significant financial impact to an institution. Approximately 25 percent of institution revenues at the University of North Dakota (UND) and North Dakota State University (NDSU) are from research activities. Institutions conducting federal research projects receive reimbursement for certain overhead costs through a facilities and administration rate. Each institution negotiates a rate with the federal government, and the rate is based on a variety of factors, including research facilities, research faculty, and total research funds. The current facilities and administration rate at UND is 38 percent, and the current rate at NDSU is 45 percent.

Ownership

The committee learned State Board of Higher Education policy provides that a research university retains ownership of all intellectual property created or developed solely by the research university's faculty, staff, and students using university resources. A private sector partner retains ownership of all intellectual property created or developed solely by its employees. When intellectual property is developed or created jointly by a research university and a private sector partner, both the research university and the private sector partner have an equal, undivided ownership interest in the intellectual property. If the intellectual property was created or developed using federal funding, either the research university retains ownership or the ownership transfers to the federal government. This applies even if the intellectual property was developed jointly between a research university and a private sector partner.

The federal Bayh-Dole Act was enacted in 1980 and affects inventions developed at higher education institutions using federal funds. Prior to the Act, there was minimal licensing and commercialization resulting from federally funded research at institutions because the federal government retained ownership of inventions. The Act allows institutions to retain certain ownership rights of inventions resulting from federal research funding. A research university may assign or transfer its ownership interest to an independent foundation.

The ownership of an invention developed by an institution employee or student varies based on the specific situation. An invention may belong to the institution if the invention was developed as part of the employee's work duties and utilized institution resources.

Royalties

The committee learned State Board of Higher Education policy requires an institution to make annual payments of at least 30 percent of the net royalties and fees associated with intellectual property to the inventor. The net royalties are the gross royalties and fees reduced by taxes, expenses for procuring and protecting the patent, and any other relevant costs. The 30 percent minimum for the disbursement of royalties applies both to intellectual property developed solely by a research university's faculty, staff, and students and to intellectual property developed jointly between a research university and a private sector partner.

Institution policy at UND provides that inventors receive a larger percentage of licensing revenue than required by State Board of Higher Education policy. Licensing revenue for inventions developed at the institution is distributed 45 percent to the inventor, 50 percent to the institution to support more research, and 5 percent to the department or unit where the invention was developed.

Licensing revenue from intellectual property developed at UND has increased from $55,000 in 2011 to $148,000 in 2013. The institution has approximately 25 to 30 invention disclosures per year.

The NDSU Research Foundation is a separate nonprofit entity that owns and manages intellectual property developed at NDSU. The foundation coordinates intellectual property protection, marketing, licensing, and enforcement. After recovery of patenting and licensing expenses, the royalty revenue relating to an invention is

distributed 30 percent to the inventor, 40 percent to the departments and units that developed the invention, and 30 percent is retained by the institution and foundation.

The NDSU Technology Transfer Office reported 58 inventions in fiscal year 2013. NDSU Research Foundation licensing revenues have ranged from $1.2 million to $2.1 million per year since 2004.

Royalty-Bearing Licenses

The committee learned the owner of intellectual property has the right to negotiate exclusive or nonexclusive commercially reasonable royalty-bearing licenses for the commercialization of the intellectual property. If the intellectual property was created jointly between a private sector partner and a research university, both parties have the right to negotiate royalty-bearing licenses. A private sector partner may request an exclusive royalty-bearing license with the research university to gain complete control over the intellectual property. A nonexclusive royalty-bearing license usually costs less, but allows other private sector partners to gain access to and utilize the intellectual property. In cases where the intellectual property was created or developed jointly between a private sector partner and a research university using federal funding, the private sector partner has the first option to negotiate a royalty-bearing license with the research university assuming the research university retained ownership of the intellectual property. The terms of royalty-bearing licenses are unique to each agreement.

State Board of Higher Education Policy

Section 15-10-17(9) allows the State Board of Higher Education to adopt rules promoting research and encouraging the development and commercialization of intellectual property. State Board of Higher Education Policy 611.2 enables institutions to develop procedures to manage intellectual property at the institution. Board policy does require certain provisions, such as the requirement that at least 30 percent of net royalties received for a patent or copyright be distributed to the original creator.

The committee learned a University System task force was created in 2010 to review State Board of Higher Education policy relating to intellectual property. The task force recommended the board adopt minor changes to existing policies. The board reviewed the proposed changes to intellectual property policies at a meeting in November 2013. However, the board tabled any action on the proposed changes to allow board members to receive additional input regarding the changes.

Research North Dakota Program

The committee received information regarding the Research North Dakota program. The committee learned the 2013 Legislative Assembly appropriated $12 million from the general fund to the Department of Commerce for Research North Dakota program grants to be used as follows:

- Up to $2 million for venture grants to research institutions for pursuing further commercialization of technology developed by the institution or jointly with a startup or spinoff business operating in the state.
- A total of $10 million to provide grants to research institutions for research, development, and commercialization activities with private sector partners. Of this amount, $4 million is to be used for biotechnology grants to develop and commercialize vaccines and antibodies.

Higher Education Funding

Previous and Current Higher Education Funding Methods

Long-term financing plan and resource allocation model (2001-03 biennium through 2011-13 biennium) - 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 contracted with the National Center for Higher Education Management Systems for assistance with the development of the plan and model. The board reviewed the recommendations of the National Center for Higher Education Management Systems and adopted a long-term financing plan consisting of base operating funding, incentive funding, and capital asset funding components. The following is a description of the long-term financing plan and resource allocation model that was used prior to the 2013-15 biennium appropriation.

Base operating funding component - The base operating funding component of the long-term financing plan provided funding to each higher education institution to support core campus functions, such as instruction, research, and public service. The funding for each institution was based on the institution's current state general fund appropriation with general fund appropriation increases to address parity and equity. Parity funding was to be used to continue current programs and services, including salaries, benefits, and inflationary increases. Equity funding was 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 included 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 provided funding to each of the higher education institutions for maintenance and replacement of facilities and infrastructure. The funding provided to each of the institutions was left to the discretion of the institution with appropriate approvals by the State Board of Higher Education for projects greater than $250,000. Institutions were given the authority to allocate funds for repair and replacement priorities for both deferred maintenance and regular repair and replacement projects as determined by the institution. Institutions were allowed to continue unspent capital asset funding from one biennium to the next in order to complete the projects started in one biennium but not completed until the next and to accumulate funds to complete large projects that require multiyear funding. The capital asset funding component was applied to new state buildings built on campuses; however, no new operating funds were added to the base operating budget for operating costs if the operating base was already at the benchmark target.

Adjusted Student Credit-Hour Funding Method (2013-15 Biennium)

The Legislative Assembly in 2013 Senate Bill No. 2200 adopted a new higher education funding method for the 2013-15 biennium based on an adjusted student credit-hour calculation. The calculation involves multiplying a base amount per student credit-hour by an adjusted student credit-hour calculation for each institution. The resulting equalized base budget is then adjusted for inflation to determine total funding for an institution.

The adjusted student credit-hour amount for an institution is determined as follows:

1. Completed student credit-hours are determined for each institution. A completed credit-hour is one for which a student met all institutional requirements and obtained a passing grade.
2. A weighted completed student credit-hour calculation is determined by multiplying each institution's completed student credit-hours by an instructional program classification factor. The factor amount for each program classification is based upon historical costs of instruction in each program.
3. The weighted completed student credit-hour amount for each institution is then adjusted for:
   a. A credit completion factor which is based on total credits completed at an institution. Institutions that have a lower credit-hour output receive a greater weighting factor.
   b. An institutional size factor based on the square footage of facilities at an institution. Institutions that have a large amount of infrastructure may receive an additional factor adjustment.

The adjusted student credit-hours are then multiplied by a base per credit amount which varies based on institution type. The following is a summary of the base rates for each institution for the 2013-15 biennium:

Institution(s)	Base Rate Per Credit-Hour
North Dakota State University, University of North Dakota	$66.35
Dickinson State University, Mayville State University, Valley City State University	$95.57
Minot State University	$98.75
Bismarck State College, Dakota College at Bottineau, Lake Region State College, State College of Science	$101.73
Williston State College	$104.88

Through June 30, 2017, an institution may not receive less than 96 percent of the state aid to which the institution was entitled during the previous fiscal year. Under the adjusted student credit-hour funding method, funding for major capital projects is appropriated separately from the formula.

2013-15 Biennium Appropriations Affecting the Higher Education Funding Formula

The committee learned the 2013 Legislative Assembly provided funding to institutions for 5 percent annual inflation adjustments. In addition, ongoing funding was provided for specific campus security, energy impact, flood recovery, and other needs as follows:

- A total of $2.5 million from the general fund was appropriated to two-year colleges and four-year regional universities for additional security.
- Minot State University received a general fund appropriation of $2.5 million for flood recovery needs.
- Williston State College received a general fund appropriation of $2.5 million for extraordinary needs resulting from energy development.

- Funding for internal audit and legal positions was reallocated from NDSU and UND to the University System office.
- Funding of $800,000 was reallocated from the University System office to UND for professional liability insurance.
- Funding of $542,857 was appropriated from the general fund to UND for costs relating to the health care workforce initiative.

The committee learned that adjusting the funding formula to include these campus-specific items can have a significant impact on future funding calculations. It may be more appropriate to provide funding for campus-specific items, such as energy development impact funding and flood recovery funding, separate from the funding formula. The schedule below details how the base per credit-hour rates are affected by the campus specific funding.

Institution	Base Rate	Inflationary Adjustments	Security Needs	Energy and Flood Impact Needs	Other Operations Adjustments	2013-15 Biennium Per Credit-Hour Rate	2013-15 Biennium Per Credit-Hour Rate Excluding Energy and Flood Impact Funding
Bismarck State College	$101.73	$7.76	$0.33			$109.82	$109.82
Dakota College at Bottineau	$101.73	$7.76	$1.38			$110.87	$110.87
Lake Region State College	$101.73	$7.76	$0.87			$110.36	$110.36
State College of Science	$101.73	$7.76	$0.28			$109.77	$109.77
Williston State College	$104.88	$8.00	$8.62	$28.98		$150.48	$121.50
Dickinson State University	$95.57	$7.29	$2.52			$105.38	$105.38
Mayville State University	$95.57	$7.29	$0.70			$103.56	$103.56
Minot State University	$98.75	$7.53	$1.32	$6.37		$113.97	$107.60
Valley City State University	$95.57	$7.29	$0.49		$0.49	$103.84	$103.84
North Dakota State University	$66.35	$5.06			($0.66)	$70.75	$70.75
University of North Dakota	$66.35	$5.06			($0.16)	$71.25	$71.25

Preliminary 2015-17 Biennium Funding Calculations

The committee learned the 2015-17 biennium funding formula allocations for institutions will be based on 2011-13 completed student credit-hours. The preliminary calculations for the 2011-13 biennium indicate there were 7,284,976 adjusted student credit-hours completed at institutions. This amount represents an increase of 437,657 adjusted student credit-hours from the 2009-11 biennium.

The committee learned the 2013-15 biennium general fund base budget for University System institutions is $563 million. Based on preliminary calculations, the higher education funding formula will provide base funding of $599.1 million to institutions for the 2015-17 biennium. The $599.1 million base funding calculation does not include any funding for inflationary adjustments, such as employee salary increases. An additional $8.9 million of funding is required for every 1 percent inflationary adjustment that is provided.

The schedule below details potential campus funding changes for the 2015-17 biennium based on a 5 percent inflationary adjustment and other adjustments discussed by the committee. The committee is not recommending any specific funding adjustments and the schedule is for information purposes only.

.	2013-15 Biennium Ongoing General Fund Appropriations[1]	Funding Formula Adjustments	5 Percent Annual Inflation Adjustment	Additional Security Funding	Campus Energy Development and Flood Recovery Funding	Potential 2015-17 Biennium Ongoing General Fund Appropriations	Increase	
Bismarck State College	$33,071,327	($1,280,194)	$2,424,074	$505,500		$34,720,707	$1,649,380	5.0%
Dakota College at Bottineau	8,006,050	393,883	640,495	337,000		9,377,428	1,371,378	17.1%
Lake Region State College	12,584,464	1,813,609	1,097,853	405,500		15,901,426	3,316,962	26.4%
State College of Science	39,193,835	6,063,238	3,450,852	252,750		48,960,675	9,766,840	24.9%
Williston State College	10,481,307	56,710	803,515		$2,500,000	13,841,532	3,360,225	32.1%

.	2013-15 Biennium Ongoing General Fund Appropriations[1]	Funding Formula Adjustments	5 Percent Annual Inflation Adjustment	Additional Security Funding	Campus Energy Development and Flood Recovery Funding	Potential 2015-17 Biennium Ongoing General Fund Appropriations	Increase	
Dickinson State University	26,708,305	(1,068,332)	1,955,048			27,595,021	886,716	3.3%
Mayville State University	14,723,416	1,427,802	1,231,530	405,500		17,788,248	3,064,832	20.8%
Minot State University	42,209,831	2,227,966	3,388,335		2,500,000	50,326,132	8,116,301	19.2%
Valley City State University	21,099,454	2,720,705	1,816,287	505,500		26,141,946	5,042,492	23.9%
North Dakota State University	143,073,784	10,268,988	11,692,386			165,035,158	21,961,374	15.3%
University of North Dakota	206,857,161	13,336,404	16,789,759			236,983,324	30,126,163	14.6%
Total	$558,008,934	$35,960,779	$45,290,134	$2,411,750	$5,000,000	$646,671,597	$88,662,663	15.9%

[1]Excludes $2.5 million of energy impact funding provided to Williston State College and $2.5 million of flood recovery funding provided to Minot State University.

Student Tuition and Fees

The committee received information regarding the process used to set student tuition and fee rates and tuition models currently used by institutions. The committee learned the University System uses a budget model that provides for instructional costs to be paid from state general fund appropriations and student tuition collections. The model calculates a state share of expenses and a student share of expenses based on institution type. At research institutions, the state is expected to pay for 60 percent of instructional costs and students are expected to pay the remaining 40 percent of costs. At four-year regional universities, the state is expected to pay 70 percent of costs and students are expected pay 30 percent of costs. At community colleges where student access is a priority, the state is expected to pay 75 percent of instructional costs while students are expected to pay 25 percent of costs.

The committee learned the tuition model structure varies by institution. The committee received the following schedule detailing current tuition model structures at each institution:

Institution	Current Tuition Model Structure
Bismarck State College, State College of Science, Valley City State University, Williston State College	Students charged per credit-hour for all credits taken.
Dakota College at Bottineau, Dickinson State University, Lake Region State College, University of North Dakota	Students charged per credit-hour if taking less than 12 credits and charged the same flat rate if taking 12 or more credits.
North Dakota State University	Students charged per credit-hour if taking less than 12 credits and charged the same flat rate if taking 12 or more credits. Tuition charges vary by student based on the program in which the student is enrolled.
Mayville State University, Minot State University	Students charged per credit-hour if taking less than 12 credits, charged the same flat rate if taking 12 to 18 credits, and charged per credit-hour if taking more than 18 credits.

The committee learned tuition charges for nonresident students also vary by institution. Some institutions charge the resident tuition rate for selected categories of nonresident students. In addition, the University System has entered into a tuition reciprocity agreement with Minnesota which determines the tuition rates for Minnesota students attending a University System institution.

Student Affordability

The committee received information regarding student affordability. The committee learned tuition and fee charges at four-year University System institutions are generally less than tuition and fee charges at similar institutions in regional states. However, tuition and fee charges at two-year University System institutions are generally higher than tuition and fee charges at similar institutions in the region.

The committee learned the average student loan debt in North Dakota is $27,425, which is higher than the national average of $26,600. However, North Dakota students have a student loan default rate of 5.6 percent, which is less than the national average of 10 percent. Students from middle-income families, which have income levels from $40,000 to $59,000, generally incur more student loan debt than students from lower- or upper-income level families.

The committee learned there are several programs to provide financial assistance to students. Students may be eligible to receive federal grants and loans for educational costs. The state also has several student financial assistance programs, including the state grant program, academic and career and technical education (CTE) scholarship program, Indian scholarship program, and specific occupation loan forgiveness programs.

The committee received the following information regarding selected state programs that provide student financial assistance:

Program	Description	Current Number of Recipients	Current Amount of Award
State grant program	Provides needs-based grants to students	7,900	$1,650 per year
Academic and career and technical education scholarship program	Provides merit-based scholarships to students	1,400 new awardees per year	$1,500 per year up to $6,000 lifetime maximum
Scholars program	Provides merit-based support to students with high academic achievements	150 to 160	Full tuition amount
Professional student exchange program	Provides support payments to students attending veterinary, dentistry, and optometry schools in other states	94	Support payments are generally equal to the difference between in-state and out-of-state tuition at the applicable school

Open Textbooks

Background

An open textbook is a digital textbook made available to students, teachers, and others at little or no cost. An open textbook is generally available online but may be made available through other formats. Open textbooks are generally licensed under an open copyright license which allows individuals to use, modify, and distribute the materials.

Textbook Costs

The University System currently lists anticipated student book and supply costs to be $1,100 per year. A June 2013 United States Government Accountability Office report found the cost of new college textbooks increased by 82 percent between 2002 and 2012. As a comparison, overall consumer prices increased by 28 percent during the same time period. Options for students to save on textbook costs include renting textbooks, buying used textbooks, buying an e-textbook version, or buying textbooks online.

Actions by Other States Relating to Open Textbooks

Several states have created initiatives to use open textbooks for elementary, secondary, and postsecondary education courses. In 2009 the Florida Legislature passed a bill to establish the Florida Distance Learning Consortium and assigned the consortium the duty to "develop and operate a central instructional content repository that allows public school and postsecondary educational institution users to search, locate, use, and contribute digital and electronic instructional resources and content, including open access textbooks. In the development of the repository, the consortium shall identify and seek partnerships for the purpose of sharing instructional content."

As part of the effort an Open Access Textbook Task Force was established to study the use of open textbooks and prioritize high-enrollment general education courses for the use of open access textbooks. The task force developed several recommendations which were used in developing an open textbooks initiative. As part of the initiative, open textbooks are stored on the Florida statewide digital repository named "The Orange Grove." The Orange Grove is an online statewide initiative to store and manage instructional, organizational, and professional development resources for faculty, staff, and students. In addition to open textbooks, the repository includes books, maps, graphs, lesson plans, and other resources.

In 2012 the University of Minnesota created an open academics textbook catalog to help faculty find affordable textbook options for courses, including open textbooks. Instructors can customize the open textbooks to fit course needs by remixing, editing, and adding additional content. Students can generally receive a free digital version of the open textbook or can purchase low-cost printed copies.

University System Open Textbook Initiative

The committee received information regarding an open textbook initiative being developed by the University System. The committee learned a three-phase plan has been developed for campuses to begin using open textbooks as follows:

- Phase 1 - Develop a partnership with the University of Minnesota open textbook library.
- Phase 2 - Provide a trainer at each campus to assist in using open textbooks.
- Phase 3 - Provide grants as an incentive to use open textbooks.

Other Information Received

Predictive Analytics

The committee received information regarding predictive student analytics. The committee learned UND has begun a process known as strategic enrollment management to use data to make informed decisions about student recruitment, retention, and graduation. Predictive analytics reporting is a tool that can be used to identify at-risk students and to find methods to improve student performance. Student problem areas can be identified, and additional student assistance can be provided to alleviate the problems.

The committee received information regarding initial findings at UND using predictive analytics. The committee learned key courses were identified, and with over 70 percent accuracy, the data used to determine a student's success in college-level courses. Student risk factors identified include a high school grade point average of less than 2.65, race, gender, transfer status, and age when enrolling in college.

Developmental Education

The committee received information regarding the number of students enrolled in developmental education. The committee learned during the fall 2013 semester, a total of 3,364 students were in enrolled in developmental education courses at University System institutions. An analysis was conducted regarding the success of students who complete developmental education courses. The analysis reviewed the completion rates of students enrolled in college Algebra and English composition courses. The analysis determined that students who enrolled in developmental education courses generally had lower success rates in the college Algebra and English composition courses than students with similar high school grade point averages that did not enroll in a developmental education course.

Common Core Standards

The committee received information from representatives of the Department of Public Instruction regarding Common Core Standards for K-12 education and efforts to connect K-12 completion requirements with higher education admissions requirements. The committee learned the state has always had standards in all core education subject areas. The Common Core Standards are new standards specifically for English language arts and mathematics. The purpose of the Common Core Standards is to detail the level of proficiency by grade level that a student needs to achieve in order to be prepared for college or a career.

The committee learned the Common Core Standards were implemented beginning with the 2013-14 academic year, and the University System was a partner in developing the standards. The Common Core Standards are intended to better prepare students to succeed in college and will correspond with the University System's Pathways to Student Success Plan.

Pathways to Student Success Plan

The committee received information regarding the University System's Pathways to Student Success Plan. The committee learned the goal of the plan is to ensure that students wanting to learn will succeed in college. Students that are prepared for college courses are more likely to graduate on time and have less debt.

The committee learned the Pathways to Student Success Plan uses an admissions index to guarantee a student automatic admission to a University System institution. The index calculates a weighted student admissions score as follows:

	Student Admissions Score Calculation
	ACT score x 3
+	High school grade point average x 20
+	High school core courses completed x 5
+	Resident student bonus (10 points)
=	Student admission score

The maximum admissions score that may be received is 273. The student admissions score is used to determine which institutions a student is guaranteed admissions to as follows:

Institution Type	Minimum Score Needed for Automatic Admission
Research university	210
Regional master's university	190
Regional university	180
Community college	No minimum

The committee received the following information regarding the number of new students who would not have received automatic admission to the institution they enrolled in during the fall 2013 semester based on their admissions score:

Institution	Number of Fall 2013 Freshman Students Who Would Not Meet Minimum Admissions Score[1]	Percentage of Fall 2013 Freshman Enrollment[1]
North Dakota State University	1,039	41%
University of North Dakota	861	46%
Minot State University	25	7%
Dickinson State University	29	20%
Mayville State University	45	35%
Valley City State University	30	17%

[1]Based on new freshman applicants who enrolled during the fall 2013 semester.

Succeed 2020 Program

The committee received information regarding the Succeed 2020 program. The committee learned the Succeed 2020 program received a $25 million grant from the Hess Corporation and is focused on efforts to better prepare high school students for college and careers. The program provides funding to regional education associations for local initiatives to improve student preparedness.

The committee learned the following three progress indicators are important to determine the success of students:

1. ACT test scores;
2. On time completion of high school and postsecondary programs; and
3. Need for remedial education at the postsecondary level.

The committee learned strategies for improving performance on the indicators include providing students with ongoing college and career counseling, providing students with access to and success in rigorous academic and CTE programs, and providing students with access to support, such as tutoring and work-based learning opportunities.

Two-Year Institutions

The committee received information regarding issues affecting two-year institutions. The committee learned the state is served by five two-year institutions. Each institution offers a variety of programs, and each institution specializes in certain programs. The committee learned 61 percent of students who enroll at a North Dakota two-year institution and later transfer to a four-year institution complete a degree within six years as compared to the national average of 36 percent.

The committee learned two-year institutions are facing several challenges, including the recruitment of faculty members. Many CTE program faculty members are recruited from private business and industry. Due to the strong economy in the state, the level of salaries offered by private businesses is exceeding the level of salaries that institutions are able to offer. In addition, it is a challenge to inform students and parents regarding the two-year programs offered in the state. The Legislative Assembly has appropriated funds for the community college awareness initiative to help inform the public of two-year programs.

Authorization Reciprocity Agreements

The committee learned the State Authorization Reciprocity Agreement (SARA) establishes a state-level reciprocity program that details minimum standards for a postsecondary institution to offer distance education in another state. SARA is administered by the four regional education compacts, and North Dakota has been approved by Midwestern Higher Education Compact to join the Midwestern State Authorization Reciprocity Agreement. Membership in SARA is open to all public and private degree-granting postsecondary institutions.

Teacher and Administrator Preparation

The committee received information regarding teacher and administrator education programs. The committee learned elementary and secondary schools are becoming increasingly diverse, and teacher preparation programs need to adjust to recognize the diversity. Some institutions are providing additional opportunities for teacher preparation students to experience diversity in the classroom. Institutions are adjusting teacher preparation programs to align with Common Core Standards. The teacher preparation programs are revising curriculum and experiences in disciplinary departments to prepare teachers for Common Core content.

The committee learned institutions are working with elementary and secondary schools to improve teacher preparation program coursework. Institutions are adjusting program requirements in response to employer feedback. Some institutions have recently changed program requirements to ensure quality graduates. Examples of revised requirements include increased grade point average requirements for teacher candidates, increased length of the student teaching experience, and revised assessment courses.

The committee learned most states require a minimum of a master's degree in educational leadership to become a certified principal or superintendent. In North Dakota, a principal is required to have a teaching license, three years of teaching experience, and a certain amount of graduate education based on the level of certification. A superintendent needs a teaching license, three years of teaching experience, two years of administrative experience as a principal, and eight additional credit-hours in specific coursework beyond a master's degree.

Dual-Credit and Advanced Placement Courses

The committee received information regarding dual-credit and advanced placement courses. A dual-credit course is a college course taken by a high school student, for which both college and high school credit is awarded. An advanced placement course has college-level content, and a student may receive college credit for successfully passing an advanced placement examination. There are currently 106 high schools in the state that offer dual-credit courses, and 36 high schools offer advanced placement courses.

Sanford College of Nursing

The committee received information regarding the agreement to integrate the Bismarck Sanford College of Nursing into NDSU. The committee learned the State Board of Higher Education was informed at a meeting in November 2013 of discussions between NDSU and Sanford Health regarding the Bismarck Sanford College of Nursing. On March 27, 2014, the State Board of Higher Education approved a five-year agreement to integrate the Sanford College of Nursing into NDSU. The agreement includes two optional five-year renewal periods.

The committee learned NDSU will not need specific general fund appropriations for the operations of the nursing college. Any program funding shortfalls will be addressed through internal reallocations at NDSU. Sanford Health will provide annual cash payments ranging from $400,000 to $537,000 to NDSU for college operations during the first three years of the agreement. NDSU will lease the existing Sanford College of Nursing facilities for $1 per year for the first three years of the agreement and for $20 per square foot for the final two years of the agreement. The program will be named NDSU Nursing at Sanford Health for at least 15 years.

University System Campus Master Plan and Space Utilization Study

The committee received an update on the development of the University System campus master plan and space utilization study. The study reviewed projected demographic changes in all regions of the state to determine future enrollments at institutions. The headcount enrollment of the University System is expected to increase from the current level of 48,000 students to more than 60,000 students by 2025.

The committee learned the study reviewed capital project needs at institutions ranked by condition. The study found the heating plants at Valley City State University and NDSU are in immediate need of repair. Several academic buildings at institutions also need immediate repairs. The study estimated there is a deferred maintenance backlog of approximately $808 million at institutions. The study did not review space utilization needs at institutions or options for facilities that are no longer feasible to maintain.

Other Information Received

The committee also received updates regarding:

- The transfer of internal audit and legal positions from UND and NDSU to the University System office.
- The joint information technology building project on the campus of UND.
- The University System performance and accountability report.
- Activities of the System Information Technology Services.
- Actions of the North Dakota Higher Education Consortium for Substance Abuse Prevention.
- The North Dakota Higher Education Partnership.
- Unmanned aerial systems programs at UND.
- Trends in national and regional higher education issues.
- Issues affecting various institutions.

During the interim, the committee held meetings on the campuses of several University System institutions. While meeting on campuses, the committee conducted tours of selected campus buildings.

Committee Recommendations

The committee recommends the 64th Legislative Assembly exclude 2013-15 biennium appropriations for extraordinary flood and energy development impact needs from the higher education funding formula and to provide a separate funding allocation to campuses for extraordinary needs.

The committee recommends the 64th Legislative Assembly provide funding to institutions to allow for 24/7 security coverage at campuses.

The committee recommends House Bill No. 1043 to prohibit tuition increases at University System two-year institutions during the 2015-17 biennium and to provide a general fund appropriation of $2.5 million to offset the fiscal impact of the tuition freeze.

The committee recommends House Bill No. 1044 to increase the maximum student financial assistance grant award to $2,000 and to provide a general fund appropriation of $30,690,000 which is estimated to be sufficient to provide grants to 8,000 full-time and part-time students. The bill also increases the amount of the academic and CTE scholarships for new recipients to $1,000 per semester with a lifetime maximum of $8,000. The bill provides a general fund appropriation of $17,426,748 for existing program recipients at the current scholarship award amount and new scholarship recipients at the increased scholarship award amount.

STATEWIDE LONGITUDINAL DATA SYSTEM UPDATE

Section 15.1-02-18 establishes a Statewide Longitudinal Data System Committee. The committee is to manage a longitudinal data system that uses data from educational and workforce sources to support the research and evaluation of programs to improve the outcomes of individuals provided services. The 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.

Membership of the committee consists of:

- The Commissioner (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.

Section 15.1-02-18 provides that 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 is a data warehouse comprised of K-12 education data, postsecondary education data, and workforce data. The system will publicly report statistics on high school graduates enrolling at a postsecondary education institution, high school graduates completing college credits after high school, and information on high school graduates that require remedial education in college.

The committee received a demonstration on the various components of the statewide longitudinal data system. The committee learned the system can use high school data to determine the probability of student success in college.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES ADVISORY COUNCIL

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 and Health Sciences.

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. Recommendations for implementing strategies through the school 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.

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 2011 report of the advisory council determined there was a need for additional health care providers in the state. The health care workforce initiative was developed to increase the number of health care providers in the state and to improve the delivery of health care. The School of Medicine and Health Sciences received funding from the Legislative Assembly to begin implementing the health care workforce initiative. The initiative provides for the School of Medicine class size to increase by 16 students per year, to have 30 additional health sciences students per year, and to have 17 additional medical resident positions available per year. The school expects to request funding from the 64th Legislative Assembly to continue implementing the health care workforce initiative.

The committee received an update on the new School of Medicine and Health Sciences facility. The facility will be located in the northeast corner of the campus and will consist of 325,446 square feet of learning and support space on four floors. Construction on the building structure will began in June 2014, and the facility is anticipated to be complete by June 2016.

NORTH DAKOTA CAREER AND TECHNICAL EDUCATION SCHOLARSHIPS AND ACADEMIC SCHOLARSHIPS

The 2009 Legislative Assembly enacted legislation to create the CTE 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 and 2013. The current eligibility requirements provide a student must be a resident of the state and meet the following program requirements for one of the programs:

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 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, the same Native American language, American sign language, or career and technical education from a coordinated study plan approved by the Superintendent of Public Instruction
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

Career and Technical Education Scholarship	Academic Scholarship
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 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 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 fulfill one-half unit required for the scholarship through a dual-credit course

To continue receiving a scholarship under the program, a student must be enrolled in at least 12 credits during the student's first two semesters and must be enrolled in at least 15 credits during each semester thereafter. However, 2013 House Bill No. 1258 provides a student may continue to receive the scholarship if the student requires fewer than 15 credits to graduate and is enrolled in at least 12 credits. The Legislative Assembly also adjusted the criteria to receive a scholarship in 2013 House Bill No. 1291. The bill expands the program to allow students who complete a home education program to be eligible to receive a scholarship.

Any student who meets the requirements for a CTE 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 2013-15 biennium legislative appropriation totals $10 million from the general fund for the program, the same as the 2011-13 biennium legislative appropriation.

Section 15-62.2-05 requires the State Board of Higher Education to provide an annual report to the Legislative Council regarding the number of North Dakota academic and CTE scholarships awarded and demographic information pertaining to the recipients.

Report

Representatives of the University System provided reports to the committee regarding the academic and CTE scholarship programs. The committee learned that of the 8,398 high school seniors in the state that graduated in 2013, a total of 1,498 qualified to receive an academic or CTE scholarship. Of the 1,498 qualified students, 931 students were eligible to receive an academic scholarship and 567 students were eligible to receive a CTE scholarship.

The committee learned a total of 3,687 students received an academic or CTE scholarship during the fall 2013 semester. The following schedule details the types of institutions attended by students receiving a scholarship during the fall 2013 semester:

	Type of Institution Attended by Scholarship Recipients (Fall 2013 Semester)				
	Two-Year Public or Tribal Institution	Four-Year Public Institution	Public Research Institution	Private Institution	Total
Academic scholarship recipients	142	267	1,767	336	2,512
CTE scholarship recipients	273	205	561	136	1,175
Total	415	472	2,328	472	3,687

Committee Recommendation

As previously discussed in this report, the committee recommends a bill to increase the amount of the academic and CTE scholarships for new recipients to $1,000 per semester with a lifetime maximum of $8,000. The bill also provides a general fund appropriation of $17,426,748 for existing program recipients at the current scholarship award amount and new scholarship recipients at the increased scholarship award amount.

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.

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	
2013-15 biennium	$1,000,000	

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.

Report

Representatives of the University System provided reports to the committee regarding the allocation of tribal college assistance grants. The committee learned $4,411.74 of grant funding was awarded per FTE nonbeneficiary student during the 2013-14 academic year. The following schedule details the allocation of grant funds during the 2013-14 academic year:

Tribal College Assistance Grants - 2013-14 Academic Year			
Institution	Headcount of Nonbeneficiary Students	FTE Enrollment of Nonbeneficiary Students	Grant Funds Provided
Cankdeska Cikana Community College	13	11.042	$48,714
Fort Berthold Community College	31	13.375	59,007
Sitting Bull College	6	6.167	27,207
Turtle Mountain Community College	46	31.583	139,336
United Tribes Technical College	64	51.167	225,736
Total	160	113.334	$500,000

AUTHORIZATION TO OPERATE PRIVATE POSTSECONDARY INSTITUTIONS

Chapter 15-18.1 as enacted by 2013 House Bill No. 1103 provides the State Board of Higher Education with regulatory authority over private degree granting institutions of higher education. The board is to establish and require compliance with minimum standards for postsecondary institutions and adopt policies to implement the standards. The standards and criteria must include quality of education; ethical and business practices; and health, safety, and fiscal responsibility. Section 15 of 2013 House Bill No. 1103 required the State Board of Higher Education to provide a report to a Legislative Management interim committee regarding the process of the board in implementing and administering the provisions of the bill.

Report

Representatives of the University System provided a report to the committee regarding the implementation and administration of requirements to operate private postsecondary institutions in the state. The committee learned the University System has implemented the provisions of Chapter 15-18.1 and is requiring private postsecondary institutions operating in the state to register with the board unless the institution has an exemption. The committee learned that from August 2013 through April 2014, 290 institutions submitted an application for authorization or exemption. Of these, 8 have been authorized, 103 have received an exemption, and the remainder are being reviewed.

Committee Recommendation

The committee recommends House Bill No. 1045 to require private postsecondary institutions to notify the State Board of Higher Education or Board of Career and Technical Education of any changes to the institution's accreditation status. The bill also requires private postsecondary institutions to notify current or potential students if a program or course complies with the certification requirements of the appropriate professional board in the state.

PERFORMANCE FUNDING POOL DISTRIBUTIONS

The Legislative Assembly in 2013 Senate Bill No. 2003 appropriated $5 million of one-time funding from the general fund for a performance funding pool. Subsection 3 of Section 21 of 2013 Senate Bill No. 2003 requires the funding to be distributed to University System institutions based on each institution meeting specific goals or other performance measures established by the State Board of Higher Education. In allocating the funds, the board is to consider any allocations from the oil and gas impact grant fund to higher education institutions. The subsection further provides the board is to provide a report to the Legislative Management during the 2013-14 interim regarding the distribution of funds from the performance funding pool.

Report

Representatives of the University System provided an update to the committee regarding distributions from the performance funding pool. The committee learned the University System is in the process of implementing the three accountability measures recommended by the University System's Performance Funding Task Force. The three measures are student retention from fall to spring at the institution where the student initially enrolled, student retention from fall to fall at any institution with the University System, and the number of students awarded degrees between July 1 and June 30 of each year. The University System is considering distributing the funding based on the accountability measures. The University System is also reviewing options to distribute a portion of the funding to an institution for a predictive analytics pilot program.

HIGHER EDUCATION MATCHING GRANT PROGRAM

Senate Bill No. 2003 (2013) created six new sections to Chapter 15-10 to create a higher education matching grant program. The bill also appropriated $29 million of one-time funding from the general fund for the program. The program is to provide one dollar in matching grants for every two dollars raised by a University System institution foundation for projects dedicated exclusively to the advancement of academics.

A project must be approved by a grant review committee which consists of the Governor or the Governor's designee, two members of the House Appropriations Committee appointed by the House Majority Leader, two members of the Senate Appropriations Committee appointed by the Senate Majority Leader, two members appointed by the Governor with the consent of the Legislative Management, and two members appointed by the State Board of Higher Education with the consent of the Legislative Management. Projects eligible to receive funding include those involving investments in research, scholarships, technology, endowed chairs, and investments in educational infrastructure, including new capital construction projects. An institution foundation is liable to the institution for any amount pledged but not received for a project.

To be eligible for a grant, a research institution must demonstrate its foundation has raised at least $50,000 in cash or monetary pledges for a project and the project has been approved by the grant review committee. Each research institution may be awarded up to $10 million in matching grants during the period beginning July 1, 2013, and ending December 31, 2014. An institution may receive additional grant funds beginning July 1, 2015, if all available funding has not been awarded.

To be eligible for a grant, a two-year institution or a four-year regional university must demonstrate its foundation has raised at least $25,000 in cash or monetary pledges for a project and the project has been approved by the grant review committee. Each two-year institution and four-year regional university may be awarded up to $1 million in matching grants during the period beginning July 1, 2013, and ending December 31, 2014. An institution may receive additional grant funds beginning July 1, 2015, if all available funding has not been awarded.

Section 38 of 2013 Senate Bill No. 2003 requires the State Board of Higher Education to provide a report to the Legislative Management regarding the number of matching grants that were sought, the number that were awarded, and the manner in which the grants were used.

Report

The committee received updates from representatives of the Governor's office, University System institutions, and University System institution foundations regarding the matching grant program. The committee learned the grant review committee developed rules and provisions for the distribution of the grants. The grants can be awarded for investments in scholarships, technology, research, endowed chairs, and educational infrastructure.

The committee learned the grant program has benefited institutions that have not traditionally had strong fundraising programs. Through May 2014, the grant review committee met eight times, and six institutions have received grant funds totaling $6.7 million. The committee has denied some requests due to the requests not complying with program guidelines. Representatives of institutions and institution foundations indicated the program is meeting its intended goals and suggested continuing the program in future bienniums.

HIGHER EDUCATION ADJUSTED STUDENT CREDIT-HOUR FUNDING METHOD - INSTRUCTIONAL PROGRAM CLASSIFICATION FACTORS

Section 15-18.2-01 as enacted by the Legislative Assembly in 2013 Senate Bill No. 2200 implemented an adjusted student credit-hour funding method for University System institutions. The method determines funding levels by adjusting completed student credit-hours by the following factors:

- Instructional program classification cost factor.
- Credit completion factor.
- Institution size factor.

The instructional program classification cost factor amounts are based upon federal Classification of Instructional Program codes for each academic area. A cost factor is applied to each code which recognizes historical costs of instruction relating to each instructional level within an academic program. Section 15-18.2-02 details the instructional program classification factors to be applied to courses in each academic area and is adjusted for each instructional level. The section provides the State Board of Higher Education ensure all factors in the section reflect the requirements of a nationally recognized and standardized instructional program classification system. The board may adopt changes to the factors in the section after receiving approval from the Legislative Management for the changes.

Committee Actions

The committee did not receive any requests from the State Board of Higher Education to approve changes to the higher education funding formula instructional program classification factors.

HUMAN SERVICES COMMITTEE

The Human Services Committee was assigned the following responsibilities:

- A study of the need for a comprehensive system of care for individuals with brain injury pursuant to Section 16 of 2013 House Bill No. 1012. The study was to include an evaluation of services available to veterans who are returning from wars, the impact of the inclusion of all acquired brain injury on traumatic brain injury programs, the need for a statewide registry for brain injury, the need for increased awareness of the impact of brain injury, the need for screening for brain injury in the education system, the availability of community support systems, the availability of specialized substance abuse services, the examination of the long-term care needs, the availability of home and community-based services, services available from independent living centers, the need for transitional supportive housing, and the suitability of the current level of care determination for brain injury.
- A study of behavioral health needs pursuant to Section 1 of 2013 Senate Bill No. 2243. The study was to include consideration of behavioral health needs of youth and adults and consideration of access, availability, and delivery of services.
- A study of home and community-based services in the state pursuant to Section 1 of 2013 Senate Bill No. 2375. The study was to include an evaluation of the need to expand the home and community-based services Medicaid waiver to cover 24-hour emergency assistance, adult companion service, behavioral programming, chore services, customized living services, environmental modifications, and transition modification support.
- Receive the annual status report from the Autism Spectrum Disorder Task Force regarding the autism spectrum disorder plan pursuant to North Dakota Century Code Section 50-06-32.
- Receive a report from the Department of Human Services regarding the autism spectrum disorder voucher program pilot project pursuant to Section 50-06-32.1.
- Receive the 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.
- Receive a report from the recipient of the grant during the 2014-15 school year to implement a certificate program that prepares individuals with autism spectrum disorder for employment in the technology sector regarding program graduates who found employment in the technology sector, their starting salaries, and their total compensation pursuant to Section 61 of 2013 House Bill No. 1013.
- Receive a report from the Department of Human Services regarding the impact of changing the eligibility requirement for the child care assistance program from 50 percent of the state median income to 85 percent and beginning July 1, 2014, reducing copay requirements for the child care assistance program pursuant to Section 8 of 2013 House Bill No. 1422.

Committee members were Representatives Chuck Damschen (Chairman), Dick Anderson, Curt Hofstad, Kathy Hogan, Dwight Kiefert, Diane Larson, Alex Looysen, Gail Mooney, Naomi Muscha, and Alon Wieland and Senators Tyler Axness, Dick Dever, Robert Erbele, Judy Lee, Tim Mathern, Nicole Poolman, and John M. Warner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

STUDY OF A COMPREHENSIVE SYSTEM OF CARE FOR INDIVIDUALS WITH BRAIN INJURY

The committee was assigned a study of the need for a comprehensive system of care for individuals with brain injury pursuant to Section 16 of 2013 House Bill No. 1012. The study was to include an evaluation of services available to veterans who are returning from wars, the impact of the inclusion of all acquired brain injury on traumatic brain injury programs, the need for a statewide registry for brain injury, the need for increased awareness of the impact of brain injury, the need for screening for brain injury in the education system, the availability of community support systems, the availability of specialized substance abuse services, the examination of the long-term care needs, the availability of home and community-based services, services available from independent living centers, the need for transitional supportive housing, and the suitability of the current level of care determination for brain injury.

Background

Section 50-06.4-01 defines traumatic brain injury as an acquired injury to the brain caused by an external physical force resulting in total or partial disability or impairment, including open and closed head injuries that may result in mild, moderate, or severe impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory perceptual and motor abilities, psychosocial behavior, physical

functioning, information processing, and speech. The term does not include brain injuries that are congenital or degenerative or brain injuries induced by birth trauma but may include brain injuries caused by anoxia and other related causes.

The Department of Human Services (DHS) Division of Mental Health and Substance Abuse manages traumatic brain injury (TBI) services. The division implemented a TBI screening tool, the Ohio State University TBI Identification Method - Short form, at all regional human service centers in March 2011. The purpose of the screening is to identify individuals who have sustained a TBI and to assist staff and clients in determining appropriate treatment strategies.

Traumatic Brain Injury Registry

The committee learned the 1987 Legislative Assembly created and enacted Sections 23-01-20 and 23-01-21 relating to a TBI central registry. Section 23-01-20 defined traumatic head injury and Section 23-01-21 directed the State Department of Health to establish and maintain a central registry of persons who sustain traumatic head injury in order to facilitate the provision of appropriate treatment and rehabilitative services to those persons by DHS or other providers. The committee learned Senate Bill No. 2109 approved by the 1999 Legislative Assembly repealed Sections 23-01-20 and 23-01-21 relating to the TBI central registry.

Traumatic Brain Injury Advisory Committee

The committee learned the Traumatic Brain Injury Advisory Committee was established in 2007 to advise DHS on issues relating to TBI. The committee consists of volunteers including individuals with TBI, family members, care givers, community providers, and state agency representatives. The committee meets on a quarterly basis to discuss issues facing individuals with TBI and their family members, provide suggestions and recommendations to DHS, and share information.

Funding

The 2013 Legislative Assembly provided $779,624 from the general fund to DHS for services relating to TBI. Of the appropriation, $320,000 was for the development of resource facilitation for individuals with TBI. Funding for services may also be provided through the DHS home and community-based services Medicaid waiver.

Findings

Department of Human Services

The committee learned the TBI screening tool implemented by the Division of Mental Health and Substance Abuse is important because there is not a registry or surveillance program in North Dakota. Of the 13,793 individuals screened at the regional human service centers during the first year, 3,512 were identified as having a TBI or a history of TBI.

The committee learned DHS has six contracts with private providers for social and recreational services for individuals with TBI, including two contracts in Bismarck, three in Fargo, and one in Grand Forks. The Department of Human Services has a single state-wide contract with an agency to provide prevocational and mentoring services for individuals with TBI. The department also has a contract with the University of North Dakota Center for Rural Health for informal supports, peer mentoring, and resource facilitation for individuals with TBI and their family members.

The committee learned about options to allow access to Medicaid services for individuals with brain injury who are working. If an individual with TBI is interested and has the financial resources to buy in to the Medicaid program, the individual can do so through the workers with disabilities program. The workers with disabilities maximum income eligibility level for one person is $2,155 per month, and the amount of the premium to buy in would be 5 percent of the individual's gross income and unearned income. The committee learned Medicaid Expansion allows an individual to qualify for the Medicaid Expansion group with annual income for one person of up to $15,856.

The committee learned North Dakota currently has 23 prevocational services beds and six extended services beds. The estimated biennial cost to increase the prevocational services contract to provide eight hours of prevocational services per month to 50 individuals would be $568,614 and the cost for an additional 28 extended services beds would be $254,688. The committee learned the estimated biennial cost for a TBI registry would be $271,083.

Other Interested Persons

The committee received information from other interested persons, including individuals with TBI, family members of individuals with TBI, service providers, county social services employees, and other advocates. The committee learned the agency contracted by DHS to provide prevocational and mentoring services does not accept private pay for the services. The committee learned Chapter 34-13 relating to employment agents and agencies requires agencies accepting private pay to register with the Labor Commissioner. Registering with the Labor Commissioner in accordance with Section 34-13-13.1 presents a financial risk to the prevocational services agency because the agency would be subject to partial repayment of fees if an employee is fired or laid off within 90 days. The committee learned

the Labor Commissioner and representatives of DHS did not object to an exemption from Chapter 34-13 for providers of employment services who are licensed or certified by DHS.

Key issues regarding TBI services identified by other interested persons include the need for:

- Better financial assistance;
- Reminders for meetings and appointments;
- Assistance with employment responsibilities;
- A more flexible sliding scale plan with regard to government services;
- Social services caseworkers trained in how to work with people with memory issues and those who have suffered brain injuries;
- Improved coordinated advocacy effort;
- More community-based supports;
- Case management services for the lifetime of the brain injury survivor;
- Additional long-term support and day-to-day services;
- A legislative definition change to include all acquired brain injuries in addition to TBI;
- A brain injury registry to connect individuals with brain injury with available services;
- The reestablishment of the traumatic brain injury waiver;
- Adjustment to the level of care screening tool to improve access to current programs offered through home and community-based services;
- A service similar to that of the developmental disability community, where people live in their own apartments with onsite supervision provided to all the clients in the building;
- A flex fund for individuals with TBI who are capable of working to encourage them to continue working and enable them to live independently; and
- Simplification and better coordination of the application process for brain injury services.

Recommendations

The committee recommends House Bill No. 1046 to establish a TBI registry administered by the State Department of Health and to appropriate funding for brain injury services. The registry is to facilitate the provision of treatment and rehabilitative services to persons who sustain a TBI by DHS or other providers. The bill provides general fund appropriations of $251,083 to the State Department of Health to establish and administer the registry, $20,000 to DHS for marketing and training relating to the registry, $1,305,000 to DHS to coordinate services for persons with TBI in each human service region, and $650,000 to DHS to expand services, including return to work programming, for individuals with brain injury. The bill also authorizes one full-time equivalent (FTE) position for the State Department of Health.

The committee recommends Senate Bill No. 2044 to provide a general fund appropriation of $250,000 to DHS to establish and administer a flex fund program for persons with TBI.

The committee recommends House Bill No. 1047 to amend Section 34-13-13.1 to exempt providers of prevocational services licensed or certified by DHS from registering as an employment agency with the Labor Commissioner.

The committee recommends House Concurrent Resolution No. 3005 to direct the Legislative Management to continue the study of a comprehensive system of care for individuals with brain injury during the 2015-16 interim.

STUDY OF BEHAVIORAL HEALTH NEEDS OF YOUTH AND ADULTS

The committee was assigned a study of behavioral health needs pursuant to Section 1 of 2013 Senate Bill No. 2243. The study was to include consideration of behavioral health needs of youth and adults and consideration of access, availability, and delivery of services. The study was to include input from stakeholders, including representatives of law enforcement, social and clinical service providers, education, medical providers, mental health advocacy organizations, emergency medical service providers, juvenile court, tribal government, and state and local agencies and institutions.

Background

The Department of Human Services provides behavioral health services through its Division of Mental Health and Substance Abuse Services, the State Hospital, the Life Skills and Transition Center (formerly the Developmental Center at Westwood Park), and the eight human service centers located throughout the state.

The Department of Corrections and Rehabilitation provides behavioral health services through its Division of Adult Services and Division of Juvenile Services.

Department of Human Services

Division of Mental Health and Substance Abuse Services

The committee learned the Division of Mental Health and Substance Abuse Services is responsible for overseeing a statewide network of substance abuse and mental health treatment, recovery support services, mental health promotion, and substance abuse prevention services. During the 2011-13 biennium, the division licensed 84 substance abuse treatment programs, 44 driving under the influence (DUI) education programs, eight regional human service centers, and six psychiatric residential treatment facilities for children and adolescents.

State Hospital

The committee learned the State Hospital, located in Jamestown, provides traditional and secure services to adult patients. Traditional services include short-term acute inpatient psychiatric and substance abuse treatment, intermediate psycho-social rehabilitation services, forensic services, and safety net services for the adult patients. Secure services include inpatient evaluation and treatment services for sexually dangerous individuals.

The committee learned the State Hospital utilizes 289 beds as follows:

- 90 beds for addiction services to 60 male and 30 female offenders at the Tompkins Rehabilitation and Corrections Center;
- 123 beds for acute inpatient and intermediate psycho-social rehabilitation services; and
- 76 beds in the secure services unit (sex offender program).

Human Service Centers

The committee learned DHS operates eight regional human service centers in Williston, Minot, Devils Lake, Grand Forks, Fargo, Jamestown, Bismarck, and Dickinson. The human service centers provide core services, including:

- Aging services;
- Developmental disabilities;
- Vocational rehabilitation;
- Child welfare services;
- Children's mental health;
- Serious mental illness (Extended Care Coordination);
- Acute clinical services;
- Substance abuse services;
- Outpatient sex offender treatment; and
- Crisis/emergency response services.

The committee learned the human service center services are provided in public outpatient clinic settings, rural outreach centers, client homes, or other community settings. The human service centers served 26,494 clients in fiscal year 2012, a reduction of 541 clients from fiscal year 2011.

Life Skills and Transition Center

The committee learned the Life Skills and Transition Center provides services for individuals with developmental and intellectual disabilities. The center provides residential services, including secure services, health services, behavioral services, and youth transition services. The center had a 2013-15 budget of $55,169,929, including $26,070,850 from the general fund. The center had a total adult developmentally disabled and intellectually disabled population of 82 as of June 2014. The committee conducted a tour of the Life Skills and Transition Center.

Department of Corrections and Rehabilitation

Division of Adult Services

The committee learned the Division of Adult Services treatment department provides for the development of personal growth and rehabilitation programs for inmates. Mental health programs are provided to assist inmates with mental health concerns through counseling, psychological services, and psychiatric services. In addition, the State Penitentiary is a licensed addiction treatment center which staffs licensed addiction counselors, licensed social workers, and paraprofessionals to assist inmates in overcoming addictions and personal problems.

The committee learned approximately 3 percent of inmates have been identified as particularly vulnerable adults due to cognitive impairment. The State Penitentiary has allocated eight beds to serve inmates with special mental health and vulnerability concerns who cannot reside in general housing. The James River Correctional Center has a 28 bed mental health unit that allocates additional staff resources to managing the behavior and treatment of offenders with serious mental illness, chronic suicidal tendencies, or vulnerability concerns who cannot reside in general housing.

Division of Juvenile Services

The Division of Juvenile Services includes the Youth Correctional Center and eight regional community-based services offices located throughout the state. The division provides comprehensive case management, treatment, and supervision programs for troubled adolescents. Treatment programs for juveniles include:

- Group counseling;
- Individual counseling;
- Substance abuse education;
- Cognitive-behavioral classes;
- Recovery and relapse prevention counseling;
- Grief/loss counseling;
- Victim impact programming;
- Security intervention (gang) classes;
- Physical fitness;
- Spirituality;
- Health; and
- Work.

The committee learned 63 percent of youth in the juvenile correctional system have mental health concerns, and 74 percent have a substance abuse diagnosis.

Funding

The 2013 Legislative Assembly provided funding as follows for programs and services relating to behavioral health needs:

	General Fund	Other Funds	Total
Department of Human Services			
Division of Mental Health and Substance Abuse Services	$8,520,188	$15,390,004	$23,910,192
State Hospital - Traditional services	45,265,694	19,602,513	64,868,207
Human service centers	105,076,400	77,357,138	182,433,538
Total Department of Human Services	$158,862,282	$112,349,655	$271,211,937
Department of Corrections and Rehabilitation			
Division of Adult Services	$4,400,000		$4,400,000
Division of Juvenile Services	2,300,000		2,300,000
Total Department of Corrections and Rehabilitation	$6,700,000		$6,700,000

Voucher Payment Program

The committee learned the 2011 Legislative Assembly approved Senate Bill No. 2326 requiring DHS to establish and administer a pilot voucher payment program to provide substance abuse services for the 2011-13 biennium. The program was to consist of voucher use and private choice as a method of providing substance abuse services to

beneficiaries, and allow a voucher to be submitted to the beneficiary's provider of choice for payment of substance abuse services.

The Department of Human Services was 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. If the federal Access to Recovery grant funding was not available to DHS, the department was not required to implement the pilot voucher payment program. The committee learned DHS did not receive a federal Access to Recovery grant during the 2011-13 interim and, as a result, did not implement the program. The Department of Human Services did not anticipate receiving funding from the Access to Recovery grant for the 2013-15 biennium.

Consultant Services and Methodology

The Legislative Council issued a request for proposal for consultant services for assistance in a study of behavioral health needs of youth and adults in North Dakota. The specific tasks to be addressed included:

1. Identify stakeholders of the behavioral health system.
2. Identify the need for behavioral health services by geographic area of North Dakota.
3. Assess the availability and adequacy of supports, services, and facilities to meet the need for behavioral health services in the state by:
    a. Identifying the services, supports, and facilities available in the state by geographic area;
    b. Identifying gaps in coverage;
    c. Identifying differences in adequacy of access, availability, and delivery of services for youth with behavioral health needs and adults with behavioral health needs;
    d. Assessing the availability of prevention and early intervention services for behavioral health in North Dakota;
    e. Identifying areas of treatment needing improvement, taking into account new evidence-based practices leading to effective recovery; and
    f. Assessing the impact of population changes in North Dakota on behavioral health service systems.
4. Assess the availability of insurance coverage for behavioral health care in North Dakota.
5. Assess the adequacy of communications between the public and private systems of behavioral health services.
6. Assess the adequacy of integration of the physical health care and behavioral health care systems in North Dakota.
7. Develop a plan based on specific goals and objectives to improve behavioral health services in North Dakota.
8. Provide recommendations to implement the plan to improve behavioral health services in North Dakota. Recommendations were to identify the entity responsible for implementing the recommendation, required legislative changes, and any estimated costs by funding source.

The committee received proposals from four entities interested in providing consultant services--the North Dakota Rural Behavioral Health Network; the Public Consulting Group; the Technical Assistance Collaborative, Inc.; and Ms. Renee Schulte, Schulte Consulting, LLC, Iowa. The Public Consulting Group later withdrew its proposal. The committee selected and contracted with Ms. Schulte to conduct the study. The contract cost was $44,000. As part of the study the consultant:

- Traveled to North Dakota six times over the course of six months.
- Held 35 face-to-face meetings with various groups and individuals.
- Conducted five public hearings statewide.
- Coordinated biweekly public conference calls with participation from over 400 individuals.
- Received over 230 documents, not including emails.

Consultant Report on the Study of Behavioral Health Needs

The consultant's report included the following goals and recommendations by opportunity area:

1. Service shortages.
    a. Improve access to services.

(1) Increase use of telemedicine;

(2) Use critical access hospitals for behavioral health services;

(3) Create a bed management system;

(4) Utilize home and community-based services waivers for mental health and substance abuse services; and

(5) Increase substance abuse services including detoxification services.

b. Create conflict-free case management.

(1) Increase access to integrated dual disorder treatment statewide;

(2) Privatize case management to add choice; and

(3) Partner case management and care coordination with peer support.

c. Improve access to crisis assessment services.

(1) Increase after hour services and create after hour intake options;

(2) Increase mobile crisis services in urban areas after hours;

(3) Use telemedicine for crisis assessments; and

(4) Create e-psychiatry in the state.

2. Expand workforce.

a. Improve oversight for licensing issues and concerns.

(1) Create an oversight system for licensing boards utilizing the State Department of Health as the overseer;

(2) Expand the definition of behavioral health professional in Section 25-03.2-01;

(3) Create reciprocity language to identify boards shall accept all professional licenses meeting international and national accreditation standards and the qualified state equivalent for each behavioral health license; and

(4) Ensure all educational requirements are available within the state, with a preference for online availability.

b. Increase use of lay persons in expanding treatment options.

(1) Increase use of peer support and recovery coaches;

(2) Increase training for law enforcement, emergency personnel, corrections staff, and teachers using mental health first aid and other training;

(3) Increase law enforcement in schools; and

(4) Increase educational opportunities for behavioral health providers.

3. Change insurance coverage.

a. Increase funding options for services for youth and adults.

(1) Re-evaluate the essential health benefits package selected to identify unintended consequences;

(2) Determine if insurance coverage meets federal parity standards;

(3) Decide whether to maximize federal funding options or increase use of state and private funds to fill gaps;

(4) Determine what third party payers should be covering; and

(5) Apply for a Medicaid waiver for the serious disabling mental illness population.

b. Increase behavioral health professional coverage in Medicaid and private insurance.

(1) Change administrative code to reimburse qualified behavioral health professionals; and

(2) Increase funding to assist behavioral health professionals in training.

4. Change the structure and responsibilities of DHS.

a. Build transparency and choice in services.

(1) Create an independent appeal process for consumers;

(2) Standardize and distribute rules for uniform access to human service centers;

(3) Encourage hiring throughout the state rather than just in the human service centers;

(4) Increase oversight and accountability for contracts with an independent appeal process; and

(5) Create a list of all services provided only by DHS.

b. Consider structural changes to DHS.

(1) Change human service center responsibilities to oversight, regulatory functions, and program management at the State Hospital similar to the North Dakota developmental disability system;

(2) Improve coordination of care with a county service system for youth;

(3) If county and state behavioral health services are combined, create a regional governance system; and

(4) Improve legislative oversight of the human service center system.

5. Improve communication.

a. Create an integrated system of care.

(1) Create integrated health services, including care coordination in Medicaid;

(2) Seek additional federal funding for visiting nurses programs for behavioral health for children to age 5; and

(3) Strengthen advocacy voices in North Dakota.

b. Improve record sharing.

(1) Review and streamline record sharing options for North Dakota;

(2) Change regulations to accept electronic releases and all other treatment documentation; and

(3) Streamline the application process for residential facilities.

c. Improve communication among mental health and substance abuse service providers.

(1) Establish an intra-agency council for coordination of services;

(2) Improve regional communication from the human service centers to all providers; and

(3) Standardize policies and procedures that foster better communication, including communication regarding job vacancies.

6. Expand data collection and research.

a. Determine what providers are available within the state and map gaps.

(1) Create a provider registry; and

(2) Give the task of oversight of licensing boards to the State Department of Health.

b. Determine what services are available outside the human service center system for youth and adults.

(1) Create a repository for services using 2-1-1 and First Link; and

(2) Map current resource distribution outside the human service center system.

c. Use data to determine the best use of limited funding on treatment.

(1) Use universities or other current systems to build an outcomes-based system; and

(2) Create a list of "legacy" services and their cost to the state and consider reinvesting in evidence-based services.

The consultant also recommended North Dakota further investigate and review transportation, judicial matters, definitions of services, tribal partnerships, and advocate training. Of the recommendations, the report identified the following to be addressed by the 2015 Legislative Assembly:

1. Increase funding for adult and youth substance abuse services, including detoxification services;

2. Authorize use of telemedicine for crisis assessment and remove barriers for full utilization;
3. Increase funding for equipment for critical access hospitals to create e-psychiatry;
4. Create an oversight system for licensing boards utilizing the State Department of Health;
5. Change the definition of behavioral health professional in Century Code to include all qualified professionals;
6. Create reciprocity language for behavioral health professionals;
7. Train law enforcement personnel as first responders using mental health first aid;
8. Amend Century Code to reimburse all qualified behavioral health professionals;
9. Create an independent appeals process for consumers of behavioral health services;
10. Seek to maximize federal funding for visiting nurses and prevention programs for children to age 5;
11. Change regulations to accept electronic documentation, including electronic releases of information;
12. Assist First Link/2-1-1 in obtaining access to provider information;
13. Partner with universities to build an outcomes-based data system;
14. Create an interim committee to review the structure of DHS and provide oversight for the current human service centers system, including defining core services to be provided throughout the system; and
15. Create an interim committee to study judicial issues, including 24-hour hold, termination of parental rights, and court committals.

Behavioral Health Stakeholders Group

The committee learned individuals and agencies throughout the state had formed the Behavioral Health Stakeholders Group to meet and identify behavioral health needs in North Dakota. The group presented a report to the committee identifying recommendations to improve behavioral health services in the state. Recommendations requiring legislation or funding in 2015 include:

1. Adopt the American Society of Addiction Medicine core services grids. Define human service center roles and move to a private and/or voucher system wherever possible.
2. Expand Medicaid to licensed addiction agencies and others that are eligible for third-party reimbursements.
3. Expand the behavioral health training model for first responders used in Cass County to the whole state and integrate the model into post training standards.
4. Establish four adult mental health assessment centers in the four largest communities in North Dakota. Train critical access hospitals to triage behavioral health issues, including access to telemedicine to mental health assessment centers.
5. Assure the 2-1-1 program has access to all funded provider information, including for profit providers. Assure that consumers are aware of services through 2-1-1 and the Substance Abuse and Mental Health Services Administration Director.
6. Involve key behavioral health partners, including law enforcement, health care providers, and private partners, in one region to develop discharge planning protocols in that region, including the establishment of outcome measures. Fund the pilot project for one year.
7. Support DHS task force that addresses hearing timelines. Support changes in expert examiners, including the expansion of nurse practitioners as health care expert witnesses. Establish a mechanism so law enforcement can access information on individuals who may have been committed.
8. Establish a children/adolescent assessment network or centers in each region of the state to incorporate attendant/shelter care. These services should include access through critical access hospitals using telemedicine.
9. Evaluate outcome data on behavioral health screening tools done with Health Tracks and Healthy Steps and monitor referral patterns and unmet needs. Prepare recommendations to establish routine standardized screening using evidence-based practices throughout the state to routinely screen all 2, 3, and 4 year olds at primary care sites.
10. Establish professional licensing board standards to allow:
    a. One year of practice if licensed in another state;
    b. A process for meeting North Dakota licensing standards during the one-year period;

c. Reciprocity of licenses between Montana, South Dakota, and Minnesota; and

d. A method for issuing licenses within 30 days.

11. Expand the number of licensed addiction counselors by establishing a stipend program for licensed addiction counseling interns that would be forgiven if the licensed addiction counselor practices in the state for four years.

12. Expand the number of licensed addiction counselor training slots by providing stipends for organizations that offer the training.

13. Establish a student loan buy-down program for licensed behavioral health clinical staff.

14. Encourage private third-party payers to include coverage for couples and marriage and family therapy as part of behavioral health services and include all licensed mental health professional with established competencies in couples, relationship, and family therapy as eligible providers.

Testimony from Interested Persons

The committee received information from interested persons, including individuals with behavioral health needs, family members of individuals with behavioral health needs, law enforcement representatives, healthcare providers, education officials, insurance officials, service providers, and other advocates.

Key issues regarding behavioral health needs of youth and adults in North Dakota identified by interested persons include:

- Suicide and other behavioral health issues in schools;
- Insurance changes resulting from the implementation of the federal Affordable Care Act;
- Behavioral health training for teachers and law enforcement;
- Identification of behavioral health needs of youth;
- Increased demand for services in western North Dakota;
- Increasing frequency of law enforcement involvement with individuals with mental health and substance abuse issues;
- Unpaid internship hours necessary to become a licensed addiction counselor;
- A state voucher system to pay private providers for services;
- Necessary state funding for peer support services; and
- Substance abuse among pregnant women.

Committee Recommendations

The committee recommends Senate Bill No. 2045 to provide an appropriation of $2 million from the general fund to DHS for a voucher system for addiction treatment services.

The committee recommends Senate Bill No. 2046 to create and enact a new section of Chapter 50-24.1 relating to medical assistance. The bill directs DHS to adopt rules entitling licensed marriage and family therapists and licensed professional clinical counselors to payment for behavioral health services provided to recipients of medical assistance. The bill also directs DHS to develop an outcome-based data system for behavioral health services, directs the Legislative Management to consider studying the structure and services of DHS during the 2015-16 interim, and provides general fund appropriations of $3 million to DHS to expand adult and youth substance abuse services, including detoxification services, and $25,000 to the Highway Patrol to provide mental health first aid training for state and local law enforcement personnel.

The committee recommends House Bill No. 1048 to establish an oversight system and reciprocity language for behavioral health licensing boards. The bill also provides for licenses to be issued within 30 days of a qualified application.

The committee recommends Senate Bill No. 2047 to amend Chapter 25-03.2 relating to residential treatment centers for children to expand the definition of qualified mental health professional to include psychologists, advanced registered nurse practitioners with a national certification in psychiatric mental health care, physician assistants with a mental health certification, psychiatrists, and individuals with certain master's degrees and at least two years of post-degree clinical experience.

The committee recommends Senate Bill No. 2048 which appropriates $6 million to DHS to establish an adult and youth mental health assessment network, $175,000 to DHS to establish a pilot project to develop planning protocols for discharge or release of individuals with behavioral health issues, and $50,000 to the Department of Public Instruction to provide mental health first aid training for teachers and child care providers. The bill also directs the Legislative Management to consider continuing the study of behavioral health needs of youth and adults and to consider studying mental health screening and assessment programs for children during the 2015-16 interim.

The committee recommends House Bill No. 1049 to establish a licensed addiction counselor forgivable loan program and a mental health professional loan repayment assistance program. The bill also appropriates from the general fund $180,000 to the State Board of Higher Education to administer a grant program to assist with the repayment of student loans incurred by behavioral health professionals, $1 million to the Bank of North Dakota for an addiction counselor internship loan program revolving fund, and $200,000 to DHS to provide annual grants to private entities that provide clinical training experiences for individuals pursuing licensure as addiction counselors.

The committee recommends Senate Bill No. 2049 to amend Chapter 25-03.1 relating to commitment procedures to expand the definition of mental health professional to include licensed marriage and family therapists. The bill also amends Chapter 32-03 relating to the judicial remedies of damages and compensatory relief to expand the definition of mental health personnel to include licensed marriage and family therapists.

The committee recommends Senate Concurrent Resolution No. 4005 to direct the Legislative Management to consider studying judicial issues relating to behavioral health, including 24-hour hold, termination of parental rights, and court committals during the 2015-16 interim.

STUDY OF HOME AND COMMUNITY-BASED SERVICES

The committee was assigned a study of home and community-based services in the state pursuant to Section 1 of 2013 Senate Bill No. 2375. The study was to include an evaluation of the need to expand the home and community-based services Medicaid waiver to cover 24-hour emergency assistance, adult companion services, behavioral programming, chore services, customized living services, environmental modifications, and transition modification support.

Background

The Department of Human Services Aging Services Division provides home and community-based services to assist individuals to remain in their homes and communities. The division administers the following programs and services:

- Home and community-based Medicaid waiver.
- Service payments for elderly and disabled (SPED).
- Expanded SPED.
- Personal care.
- Technology dependent Medicaid waiver.

Home and Community-Based Medicaid Waiver

The home and community-based Medicaid waiver allows individuals currently on Medicaid to receive a variety of services and support in-home and community-based settings rather than in a nursing home. To qualify for services under the Medicaid waiver program, an individual must be:

- A Medicaid recipient;
- Screened at nursing facility level of care;
- At least age 65 or disabled by Social Security disability criteria;
- Capable of directing his or her own care;
- Living in his or her own home or apartment; and
- Able to have his or her services or care needs met within the scope of the waiver.

Service Payments for Elderly and Disabled

The SPED program provides services for elderly and disabled individuals who have difficulty completing tasks that allow them to live independently at home. Eligibility requirements for SPED include:

- Liquid assets of less than $50,000;

- Inability to pay for services;
- Impaired in four activities of daily living (ADLs) involving basic needs, including bathing, dressing, toileting, eating; or five ADLs that require a higher level of cognitive or physical ability to perform, including driving, managing money, and shopping; and
- Impairments must have lasted or be expected to last three months or longer; or
- If an individual is younger than age 18, is screened for nursing facility level of care, and is not eligible for aged and disabled or traumatic brain injury waivers and is not living in an institution, dormitory, or congregate housing; and
- The need for service is not due to mental illness or mental retardation, and the individual is capable of directing his or her own care or has a legally responsible party, and has needs within the scope of covered services.

Expanded SPED

The expanded SPED program provides in-home and community-based services for individuals who would otherwise receive care in a licensed basic care facility. Eligibility requirements for expanded SPED include:

- Receives or is eligible to receive Medicaid;
- Receives or is eligible to receive Social Security income;
- Is not severely impaired in the ADLs of toileting, transferring, or eating; and
- Is impaired in three of four instrumental activities of daily living (IADLs), including meal preparation, housework, laundry, or taking medications; or
- Has health, welfare, or safety needs, including supervision or structured environment, otherwise requiring care in a basic care facility;
- Is not living in an institution or dormitory; and
- Has needs within the scope of covered services.

Personal Care Services - Medicaid State Plan

Personal care services under the Medicaid state plan include assistance with ADLs, including bathing, dressing, toileting, transferring, eating, mobility, and incontinence care and IADLs in conjunction with the ADLs. All recipients of personal care services under the Medicaid state plan must be Medicaid-eligible.

Technology Dependent Medicaid Waiver

An individual may receive attendant care and case management services under the technology dependent Medicaid waiver if the individual is Medicaid-eligible and meets the following functional criteria:

- Meets level of care screening criteria.
- Vent-dependent at least 20 hours per day.
- Medically stable.
- Has an informal caregiver system for contingency planning.
- Is competent to participate in planning.
- If under age 65, the disability must meet Social Security criteria or determined to be physically disabled by the state review team.

Other Services

The Department of Human Services also provides home and community-based services through the children's medically fragile waiver, children's hospice waiver, targeted case management, and the program for all-inclusive care for the elderly (PACE).

Funding for Home and Community-Based Services

The 2013 Legislative Assembly provided funding for home and community-based services as follows:

	General Fund	Other Funds	Total
Home and community-based services Medicaid waiver	$6,093,666	$6,138,635	$12,232,301
SPED	14,545,977	765,584	15,311,561
Expanded SPED	1,356,679		1,356,679
Personal care	14,065,133	14,167,029	28,232,162
Technology dependent waiver	193,586	194,530	388,116
Children's medically fragile waiver	69,342	69,822	139,164
Children's hospice waiver	59,732	60,119	119,851
Targeted case management	852,279	858,533	1,710,812
PACE	5,139,546	5,172,835	10,312,381
Total	$42,375,940	$27,427,087	$69,803,027

Qualified Service Provider System

A qualified service provider (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:

1. 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.
2. 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.

Enrollment and Services

To become enrolled as a QSP, an individual or agency must submit appropriate forms to DHS. 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:

1. SPED;
2. Expanded SPED;
3. Home and community-based services waiver;
4. Technology dependent Medicaid waiver;
5. Developmental disabilities Medicaid waiver; and
6. Medicaid state plan personal care.

Previous Legislative Studies

The 2011-12 interim Human Services Committee was assigned to study the state's QSP system. The committee recommended the Legislative Assembly and DHS establish a QSP payment rate structure that provides additional funding for mileage. The 2013 Legislative Assembly provided $2,266,733, of which $1,714,301 is from the general fund, to DHS for providing a mileage payment to QSPs traveling more than 20 miles round trip for serving a client.

Findings

Department of Human Services

The committee learned there were 1,584 individual QSPs and 144 QSP agencies enrolled with DHS as of April 2014. The committee learned 615 family members, or 39 percent of the total number of enrolled individual QSPs, are enrolled to provide care. The average number of monthly recipients of home and community-based services in fiscal year 2013 was 2,324.

The committee learned an expansion of SPED to include reimbursement for medical-related transportation services would have an estimated 2015-17 biennium cost of $1.5 million from the general fund. Expansion of SPED to include services to address loneliness and isolation would cost approximately $1.1 million for the 2015-17 biennium, of which $550,000 would be from the general fund. The committee learned the addition of another level of service under SPED by reducing the number of impairments needed to qualify for services would have an estimated cost of $2.5 million, of which $2.3 million would be from the general fund for the 2015-17 biennium. The committee learned removing the requirement that individuals apply for Medicaid in order to be eligible for services under SPED is estimated to have a biennial cost of $1 million from the general fund.

Interested Persons

The committee received information from interested persons, including service providers, county representatives, and other advocates. The committee learned about nonprofit community-based organizations providing volunteer-based services for elderly and disabled persons, including Community of Care and Helping Enderlin Area Residents Thrive (HEART). These organizations provide many services free of charge and receive the majority of funding from donations, fundraisers, and private grants. Community of Care also receives $120,000 per biennium from DHS.

Key issues regarding home and community-based services identified by interested persons include:

- Certain areas of the state are lacking services and certain services are difficult to provide due to the lack of qualified service providers as well as the necessary travel;
- Service gaps exist for individuals who do not meet the total impairments needed to qualify for home and community-based services but still have service needs to remain at home safely;
- The need for medical transportation and escort to be included in allowable tasks under current funding sources;
- Concern relating to the requirement that clients apply for Medicaid if they need personal care services under the SPED program;
- The medical expense deductions for SPED have not been adjusted in more than seven years; and
- Concern regarding the issue of loneliness and the need for funding for services that address loneliness and isolation.

Recommendations

The committee recommends Senate Bill No. 2050 to create and enact a new section to Chapter 50-06.2 relating to eligibility for SPED. The bill would prohibit DHS from requiring an individual to apply for services under Medicaid as a condition of being eligible to apply for services under SPED. The Department of Human Services estimated the fiscal impact of this bill at $1 million from the general fund.

The committee recommends House Bill No. 1050 to provide a general fund appropriation of $350,000 to DHS to administer and provide grants to community-based organizations to assist in the establishment of programs to provide volunteer-based services for elderly and disabled persons. The bill also authorizes 1 FTE position for DHS.

AUTISM SPECTRUM DISORDER

Section 50-06-32 identifies the appointment and duties of the Autism Spectrum Disorder Task Force. The section directs the task force to develop a state autism spectrum disorder plan and provide an annual status report regarding the plan to the Governor and the Legislative Management. The committee was assigned the responsibility to receive this report for the 2013-14 interim.

Section 50-06-32.1 established the autism spectrum disorder voucher program pilot project. The program is to assist in funding equipment and general educational needs related to autism spectrum disorder for individuals below 200 percent of the federal poverty level from age 3 to under age 18. The section directs DHS to adopt rules addressing management of the voucher program pilot project and establishing the eligibility requirements and exclusions for the program. The section directs DHS to report to the Legislative Management regarding the program pilot project. The committee was assigned the responsibility to receive this report for the 2013-14 interim.

Section 61 of 2013 House Bill No. 1013 provided, as an emergency measure, if any money remains in the Department of Public Instruction's grants - state school aid line item after the Superintendent of Public Instruction complies with all statutory payment obligations imposed for the 2011-13 biennium, the Superintendent may transfer $250,000 to the Department of Career and Technical Education to provide a grant to an institution implementing a certificate program that prepares individuals with autism spectrum disorder for employment in the technology sector. The section directs the recipient of the grant to report to the Legislative Management regarding program graduates

who found employment in the technology sector, their starting salaries, and their total compensation. The committee was assigned the responsibility to receive this report for the 2013-14 interim.

Autism Spectrum Disorder Task Force

The Autism Spectrum Disorder Task Force consists of the State Health Officer, the Executive Director of DHS, the Director of Special Education, the Executive Director of the Protection and Advocacy Project, and 10 members appointed by the Governor. 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 is to develop a state autism spectrum disorder plan and continue to review and periodically update or amend the plan to serve the needs of individuals with autism spectrum disorder.

2013-15 Biennium Funding

The Legislative Assembly in 2013 House Bill No. 1038 provided the following appropriations relating to autism spectrum disorder:

- $235,732 from the general fund and 1 FTE position to the State Department of Health to establish and administer an autism spectrum disorder database.
- $132,568 from the general fund and $132,568 from federal funds and other sources and 1 FTE position to DHS for a state autism coordinator responsible for implementing a resource and service center to provide information and services for individuals with autism spectrum disorder, developing a statewide outreach plan, conducting regional meetings and a conference, and developing a protocol for use after screenings.
- $80,000 from the general fund and $80,000 from federal funds and other funding sources to DHS to implement a statewide autism spectrum disorder training program.
- $539,186 from the general fund to DHS to issue vouchers as part of the autism spectrum disorder voucher program pilot project for the second year of the 2013-15 biennium.
- $449,973 from the general fund and $446,973 from federal funds and other funding sources to DHS to expand the department's autism spectrum disorder Medicaid waiver program to cover 17 additional individuals from birth through age 7.

Status Update Regarding the Autism Spectrum Disorder Plan

The committee learned the Autism Spectrum Disorder Task Force meets quarterly and has an executive committee to assist with issues arising between meetings. The task force provided recommendations on autism waiver slot prioritization as it transitioned to the new waiver, received reports on the voucher program implementation, received information on the various training provided through the Department of Public Instruction, and received updates on the registry development and autism website. The committee learned goals of the task force include:

- Assure that individuals with suspected autism spectrum disorder receive an appropriate diagnosis as soon as possible;
- Create a centralized location for information on autism spectrum disorder;
- Provide a consistent message and information on autism spectrum disorder;
- Establish a model for training and provision of support services that meet the needs of diverse stakeholders;
- Receive feedback from people with autism spectrum disorder and their families and providers which indicates satisfaction with interventions and supports available;
- Instruct families and providers to implement evidence-based strategies as a matter of practice in teaching and caring for people with autism spectrum disorder as well as other individually designed strategies; and
- Assure that data is available and used to guide the services system.

Report Regarding the Autism Spectrum Disorder Voucher Program Pilot Project

The committee learned each qualifying child is eligible for up to $12,500 per year. The committee learned applications for the autism voucher are available online, and as of August 2014, 14 voucher applications had been submitted. Applicants expressed interest in items and services including autism-specific camps, a service dog to detect seizures and prevent wandering, an iPad, a note-taking device, respite care, tutoring, and job coaching.

Report Regarding the Grant to Implement a Certificate Program to Prepare Individuals with Autism Spectrum Disorder for Employment in the Technology Sector

The committee learned the Department of Public Instruction transferred $250,000 to the Department of Career and Technical Education to provide a grant to an institution implementing a certificate program that prepares individuals with autism spectrum disorder for employment in the technology sector.

The committee learned in 2013 the Anne Carlsen Center committed $500,000 to Specialisterne Midwest for training and employing individuals with autism spectrum disorder in the technology field. The committee learned the Department of Career and Technical Education will validate the grant requirements have been fulfilled and then release $9,092 to Specialisterne Midwest per successful individual completion of the 10-week training program. The committee learned placement and employment of the first group of six trainees was to begin September 2014 and the $250,000 grant from the Department of Career and Technical Education would allow for 27 training program participants. The committee learned the individuals serviced by Specialisterne Midwest are high-functioning individuals with autism spectrum disorder and range in age from 21 to 36.

CHILDREN'S HEALTH INSURANCE PROGRAM STATE PLAN

Section 50-29-02 provides DHS 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 committee was assigned the responsibility to receive the plan for the 2013-14 interim.

Healthy Steps

North Dakota's children's health insurance plan, Healthy Steps, provides premium-free health coverage to uninsured children in qualifying families. It is intended to help meet the health care needs of children from working families that earn too much to qualify for 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.

Funding

The schedule below summarizes legislative appropriations for the Healthy Steps program since the 2003-05 biennium.

	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
2013-15	$11,400,407	$21,293,663	$32,694,070

The schedule below 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	North Dakota Allocation
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[1]
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
September 30, 2013 (estimate)	66.59%	$17,311,376
September 30, 2014 (estimate)	65.00%	$18,350,056
September 30, 2015 (estimate)	65.00%	$18,900,560

[1]This amount includes one-time additional federal funding of $3,128,684.

Children Enrolled and Premium Rates

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, 2007	3,821	$183.45
June 30, 2008	4,006	$202.32
June 30, 2009	3,470	$204.03
June 30, 2010	3,368	$229.15

State Fiscal Year Ending	Average Annual Recipients	Monthly Average Premium Rates
June 30, 2011	3,718	$232.82
June 30, 2012	3,872	$272.69
June 30, 2013	4,046 (estimate)	$272.67 (estimate)
June 30, 2014	4,303 (estimate)	$311.79 (estimate)
June 30, 2015	4,436 (estimate)	$311.79 (estimate)

Report on the Children's Health Insurance Program State Plan

The committee received an annual report from DHS describing enrollment statistics and costs associated with the children's health insurance program state plan. The committee learned 4,097 children were enrolled in the program as of February 2014. The committee learned the provisions of the federal Affordable Care Act have impacted eligibility for children. Under the Affordable Care Act, children between the ages of 6 and 19 whose household income is below 133 percent of the federal poverty level must be transferred from coverage through Healthy Steps to coverage through the Medicaid program. The approximate number of children within this group is 721 children. The following is a summary regarding the status of the program's legislative appropriation for the 2013-15 biennium:

2013-15 Legislative Appropriation	2013-15 Expenditures through February 2014	Percentage of 2013 Legislative Appropriation Used
$32,694,070	$7,862,143	24.04%[1]

[1]Seven months, or 29.17 percent, of the 2013-15 biennium has expired.

REPORT ON THE CHILD CARE ASSISTANCE PROGRAM

Section 7 of 2013 House Bill No. 1422 provided DHS change the eligibility requirement for the child care assistance program from 50 percent of the state median income to 85 percent of the state median income. The bill provided a contingent appropriation of $2.5 million from the general fund which may be used if the changes in the eligibility requirement requires more funding than the amounts appropriated to DHS in its budget appropriation bill, House Bill No. 1012, as approved by the 63rd Legislative Assembly. If the funding appropriated to DHS is sufficient, DHS may reduce copay requirements for the child care assistance program. In addition to the contingent appropriation identified above, the 2013 Legislative Assembly provided $20.9 million, of which $252,656 is from the general fund and the remaining amount is from the federal child care block grant, for payments for child care services for eligible recipients. The Legislative Assembly also provided $897,336 from the temporary assistance for needy families (TANF) block grant for child care transitional assistance for working TANF families for the 2013-15 biennium.

The committee learned the change in eligibility allows a family of three to have a gross income of up to $4,915 per month to qualify, compared to the previous income limit of $3,074. Copay requirements were reduced from 3 percent to 7 percent of gross family monthly income to 1 percent to 6 percent of gross family monthly income. The number of children receiving child care assistance increased from 1,645 in July 2013 to 2,795 in June 2014. The committee learned the average monthly child care assistance program payment per child per month from July 1, 2013, through June 30, 2014, was $331.32. The committee learned child care provider rates are currently the same throughout the state, but DHS is considering implementing variable rates dependent on location and availability of services.

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 (ITD).
4. Review macro-level issues relating to information technology.
5. Review the activities of ITD.
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 ITD 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 $500,000 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 ITD and the affected institution regarding any major project of the State Board of Higher Education or any institution under the control of the State Board of Higher Education. A major project is a project that significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project and is a project with a total cost of $500,000 or more.
12. Receive and review information from ITD and the affected agency regarding any information technology project of an executive branch agency with a total cost of between $100,000 and $500,000 as determined necessary by ITD.
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 $500,000 or more.
15. Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects.

Section 54-35-15.3 authorizes the Information Technology Committee to review any information technology project or information technology plan. The section provides if the committee determines 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 the Information Technology Committee may request the State Auditor to conduct an information technology compliance review. The review may consist of an audit of an agency's information technology management, information technology planning, compliance with information technology plans, and compliance with information technology standards and policies or an audit of statewide compliance with specific information technology standards and policies.

The committee has the responsibility for reviewing the activities of ITD, the business plan of the department, statewide information technology standards, the statewide information technology plan, and major information technology projects as provided in Section 54-35-15.2, as discussed earlier; for determining information technology compliance reviews to be conducted by the State Auditor as provided in Section 54-35-15.4; and for receiving:

- A report from the State Board of Higher Education regarding higher education information technology planning, services, and major projects (Sections 15-10-44 and 54-35-15.2).
- 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 (Section 15.1-02-18).
- 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 (Section 54-35-15.2).
- 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 ITD and higher education (Section 54-59-12).
- The annual report from ITD (Section 54-59-19).

In addition to its statutory responsibilities for the 2013-14 interim, the Legislative Management assigned the committee the responsibility to study:

- Voice over Internet Protocol service and the effect of this service and other technologies on the telecommunications industry, including any recommended changes in regulation and taxation (2013 Senate Bill No. 2234).
- Issues related to the development of the current radio communication plan, its costs and components, and evolving technologies that will better serve the public (2013 Senate Bill No. 2353).

Committee members were Representatives Robin Weisz (Chairman), Corey Mock, Mark S. Owens, Roscoe Streyle, Blair Thoreson, and Nathan Toman; Senators Randall A. Burckhard, Richard Marcellais, Joe Miller, Larry J. Robinson, and Donald Schaible; and Chief Information Officer Mike Ressler.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

INFORMATION TECHNOLOGY DEPARTMENT STRATEGIC PLAN

Section 54-59-06 requires ITD to develop and maintain a business plan. Pursuant to that directive, the department prepared a strategic business plan for the 2013-15 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	• More than 90 percent of customers agree the department is a trusted business partner • More than 90 percent of customers choose the department as their preferred provider of strategic information technology services • More than 90 percent of customers agree that the department delivers information technology services that meet business needs • More than 90 percent of all incidents and requests are resolved by the estimated time • More than 99 percent of all incidents and requests are completed to the satisfaction of customers
Financial	• Make cost-effective investments • Manage revenue • Align rates with customer business needs	• The department's total net assets are within the acceptable Federal A-87 guidelines • The department's rates for select services are equal to or lower than the private sector

Business Perspectives	Objectives	Key Performance Indicators
	• Manage statewide technology spending	• 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 state network, applications, and hosting services are 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 (external) is less than 60 days • Time to fill vacant positions (internal) is less than 30 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 ITD to prepare an annual report on information technology projects, services, plans, and benefits. Pursuant to the directive, the department prepared and presented a report for fiscal year 2014 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** - $.58 per second	**Batch CPU** - $.69 per second	**Batch CPU** - $1.36 per second	**Batch CPU** - N/A
	CICS CPU - $.58 per second	**CICS CPU** - $.69 per second	**CICS CPU** - $1.11 per second	**CICS CPU** - N/A
	ADABAS CPU - $.58 per second	**ADABAS CPU** - $.69 per second	**ADABAS CPU** - $.97 per second	**ADABAS CPU** - N/A
	TSO CPU - $.58 per second	**TSO CPU** - $.69 per second	**TSO CPU** - $2.45 per second	**TSO CPU** - N/A
Network fees	**Device fee** - $49.50 per device per month	**Device fee** - $54.00 per device per month	**Device fee** - $51.15 per device per month	**Device fee** - $50.00 per device per month
	Local area network administrative fee - N/A	**Local area network administrative fee** - Included	**Local area network administrative fee** - $111.07 per hour	**Local area network administrative fee** - $105.00
	Access, information, enterprise management fee - Included	**Access, information, enterprise management fee** - $60.25 per device per month	**Access, information, enterprise management fee** - N/A	**Access, information, enterprise management fee** - $85.00 per device per month

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
	DSL service - Cost plus $175/5mb **ETS-5 service** - $765 per month	**DSL service** - Actual cost **ETS-5 service** - Actual cost	**DSL service** - $410.49/1.5mb **ETS-5 service** - Actual cost	**DSL service** - Cost plus 15 percent **ETS-5 service** - $220 plus circuit costs

Telephone Fees	
North Dakota Information Technology Department rates	Telephone line - $20 per device per month (Voice over Internet Protocol) Speaker and display function - $3 per month Voice mail (unlimited) - $5 per month
South Dakota Bureau of Information and Telecommunications rates	Telephone line - $20 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 - $26.96 per device per month (Voice over Internet Protocol) Speaker and display function - Included in fee Voice mail (three-minute limit) - $5.20 per month Voice mail (additional minutes) - $2.52 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

Software Development		
	Location	**Billing Rate Per Hour of Service**
Information Technology Department	Bismarck, ND	$69 to $99
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 $80
Connvertex	Sandy, UT	$100 to $130
Bpro, Inc.	Pierre, SD	$55 to $75
Integration Architects	Minneapolis, MN	$90 to $125
QA Technologies	Omaha, NE	$88 to $95
Seven Seas Technologies	Chesterfield, MO	$88 to $103
TEK Systems	Atlanta, GA	$88 to $103

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 2014)	Target
Acceptable level of total net assets (ratio of total net assets to average monthly expenditures)	2011 - 1.7 2012 - 2.1 2013 - 2.1	2.5	< or = to 2
Percentage of Information Technology Department rates reported in the annual report that are competitive	2011 - 100% 2012 - 100% 2013 - 100%	100%	100%
Total number of customer projects and service requests completed:	2013		
• Service requests	43,131	45,948	Monitor
• Incidents	66,463	69,412	Monitor
Customer satisfaction indexes (percentages satisfied or very satisfied) related to:	2012 - 2013		
• Value	84.6% - 83.1%	87.3%	> or = to 92%
• Timeliness	79.1% - 83.6%	91.1%	> or = to 97%
• Quality	89.6% - 88.3%	92.4%	> or = to 97%
• Knowledge	92.5% - 93.3%	93.7%	> or = to 98%
• Professionalism and courtesy	97.0% - 98.4%	93.7%	100%
Employee satisfaction index (scale is zero dissatisfied to three very satisfied)	2012 - 2.20 2013 - 2.20	N/A	> or = to 2.0

Performance Measures	Baseline (Previous Years)	Current Status (June 2014)	Target
Controllable employee turnover	2012 - 7.81% 2013 - 6.06%	6.27%	Below 6%
Percentage of service levels met	To be determined	To be determined	100%
Percentage of strategic business plan objectives completed or on schedule	2012 - 49% 2013 - 39%	61%	> or = to 75%

POLICIES, STANDARDS, AND GUIDELINES

Section 54-59-09 requires ITD 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	1
Data and information	5
Desktop	5
Document management	5
E-government	8
Geographic information systems	1
Information technology procurement	2
Project management	3
Records management	4
Security	11
Servers and storage	1
Enterprise architecture	1
Total	50

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 2015. 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.

LARGE 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 large information technology project. A large information technology project is defined in Section 54-35-15.2 to be an executive, judicial, or legislative branch project with a cost of $500,000 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 Process

Project Management Life Cycle Processes	Executive and Legislative Branch Activities
Project origination - Evaluate projects proposed for the next planning cycle and reach a consensus on the projects to be selected	Agencies identify projects to create a product or develop a service that can solve a problem or address a need within the agency. 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. Agencies prioritize information technology projects, submit their information technology plan, including project information, to ITD, and submit their information technology budgets into the Internet Budget Analysis and Reporting System (IBARS). 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. The State Information Technology Advisory Committee, a committee created by Section 54-59-07, reviews information regarding proposed major information technology projects for executive branch state agencies, excluding institutions under the control of the State Board of Higher Education and the judicial and legislative branches, and ranks those projects that receive the committee's affirmative recommendation. The following is a summary of the steps involved in the prioritization: a. The Information Technology Department sorts proposed information technology projects over $500,000 into the following three categories: (1) Projects requesting funds from the general fund for the investment or the ongoing maintenance costs. (2) Projects requesting funds from federal fund sources for the investment or the ongoing maintenance costs. (3) Projects requesting funds from other special fund sources for the investment or the ongoing maintenance costs. b. State agencies self-score projects over $500,000 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. The Governor selects projects to be funded in the executive budget recommendation. The Information Technology Department revises the prioritized listings to reflect those projects that are funded in the Governor's budget recommendation and presents the listing to the Appropriations Committees of the Legislative Assembly. The Legislative Assembly selects projects to be funded in the legislatively approved budget. The Information Technology Department conducts a preliminary architectural review for projects funded and provides a recommendation to agencies regarding proceeding with the project. Agencies refine the business cases as appropriate for those projects funded in the legislatively approved budget. Agencies submit a copy of the final business case for a project to ITD.
Project initiation - Define the overall parameters of a project and establish the appropriate project management and quality environment required to complete the project	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. Agencies submit a copy of the project charter to ITD prior to any project expenditures or signing of vendor contracts.

Project Management Life Cycle Processes	Executive and Legislative Branch Activities
Project planning - Define the exact parameters of a project and ensure all the prerequisites for the project execution and control are in place	Agencies complete planning for a project by completing and approving a project plan. A project plan should identify specific milestones throughout the project and its 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.
	Agencies submit a copy of the project plan to ITD after the plan has been approved by the project sponsor.
	Agencies present a project startup report to the Information Technology Committee. A project startup report summarizes information from the business case, project charter, and project plan, including project description, project objectives, business need or problem, cost-benefit analysis, and project risks.
Project execution and control - Develop the project or service the project was commissioned to deliver	The agency, ITD, and OMB, in consultation with the Attorney General, approve any contracts or agreements related to the project. An executive steering committee is appointed to oversee the project, including the overall project status, contract negotiation and execution, project budgets, project schedules, and project quality.
	Agencies launch the project. The assigned project manager is to manage every aspect of the project to ensure all the work is being performed correctly and on time.
	Agencies submit a project status report to ITD 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.
	Each calendar quarter, ITD prepares a large project summary report that summarizes the performance of large information technology projects and submits the report to the Information Technology Committee.
	Agencies formally acknowledge 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	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.
	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.
	Agencies submit a copy of the postimplementation review to ITD.
	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 the 2013 Legislative Assembly approved changes to Century Code related to the definition of a large information technology project and information technology project planning. The 2013 Legislative Assembly changed the definition of a large information technology project from a project with a total cost of $250,000 to a project with a cost of $500,000. The 2013 Legislative Assembly provided requirements for executive branch agencies, excluding entities under the control of the State Board of Higher Education, to include ITD in the planning process for information technology projects with an estimated cost of $100,000 or more. The 2013 Legislative Assembly provided requirements for the use of an executive steering committee to oversee large information technology projects.

Review of Large Information Technology Projects

For major information technology projects in progress during the 2013-14 interim, the committee received and reviewed quarterly status reports compiled by ITD, 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**
Department of Commerce	Website migration	Redesign of main websites with backend feeder sites	$512,780	April 2013

Project Startup Reports				
Agency	**Project Name**	**Project Description**	**Estimated Cost**	**Estimated Completion Date**
State Department of Health	Women, Infants, and Children (WIC) Electronic Benefits Transfer (EBT) Phase 1 Feasibility Study	Study the feasibility of developing an electronic benefits transfer system	$259,697	November 2013
Department of Human Services	CHIPRA NDVerify	Use technology to provide statewide outreach, enrollment, and retention for assistance programs	$650,910	August 2013
Department of Human Services	Vocational Rehabilitation Information System Replacement System	Develop a web-based, modern case management system	$2,062,689	April 2013
Highway Patrol	Electronic Permitting	Combine all permitting systems into one automated routing system	$2,560,000	October 2013
Information Technology Department	ND Health Information Network	Allow qualified organizations to access health information	$6,857,046	March 2014
Department of Emergency Services	Central electronics bank replacement project	Update to modern technology	$1,100,000	June 2013
Department of Human Services	Eligibility system modernization	Replace multiple systems with one system	$59,290,077	June 2017
Tax Department	Taxpayer Access Point (TAP) project	Upgrade and enhance the current system	$967,085	August 2014
Veterans' Home	Electronic medical records	Upgrade to an electronic medical records program	$476,600	April 2013
Office of Management and Budget	Recruiting solutions project	Create an automated recruiting process	$885,542	February 2014
Information Technology Department	Billing rewrite	Update a data processing system and a micrographics system related to billing	$1,007,061	June 2015
Department of Emergency Services	Statewide records management system	Upgrade to current law enforcement records management system	$1,280,018	October 2014

Project Closeout Reports				
Agency	**Project Name**	**Project Description**	**Actual Cost**	**Actual Completion Date**
Department of Public Instruction	Food and Nutrition Program (NDFoods)	Replaces the existing child nutrition and food distribution programs to provide more accurate and timely information for the department and all program sponsors	Actual expenditures of $810,284, compared to the baseline budget of $1,090,780	Completed in 31 months, the same number of months as scheduled
State Seed Department	SSAS 09 Upgrade	Upgrade the current application software from obsolete development tools to current tools that meet state technology standards	Actual expenditures of $362,340, compared to the baseline budget of $358,000	Completed in 37 months, the same number of months as scheduled
Department of Emergency Services	Central electronics bank replacement project	Update to modern technology	Actual expenditures of $1,013,823, compared to the baseline budget of $1,100,000	Completed in 2 months, the same number of months as scheduled
Public Employees Retirement System	PERSLink	Upgrade to a new benefits processing system	Actual expenditures of $10,069,779, compared to the baseline budget of $10,502,214	Completed in 57 months, 4 months behind schedule
Highway Patrol	Electronic Permitting	Combine all permitting systems into one automated routing system	Actual expenditures of $1,824,842, compared to the baseline budget of $2,560,000	Completed in 25 months, the same number of months as scheduled
Workforce Safety and Insurance	Information technology transformation program	Upgrade to an electronic claims processing system	Actual expenditures of $17,133,609, compared to a baseline budget of $17,813,289	**Project was terminated**

Project Closeout Reports				
Agency	**Project Name**	**Project Description**	**Actual Cost**	**Actual Completion Date**
State Department of Health	Immunization information system interoperability	Upgrade to an immunization record system and allow integration into the North Dakota Health Information Network	Actual expenditures of $589,954, compared to a baseline budget of $620,021	Completed in 37 months, one month behind schedule
Department of Human Services	NDVerify	Upgrade to an electronic processing system for medical coverage verification	Actual expenditures of $610,463, compared to a baseline budget of $708,735	Completed in 14.5 months, 1.5 months behind schedule
Bank of North Dakota	CashPlus project	Upgrade to improve federal fund sweeps and commercial loan servicing	Actual expenditures of $470,163, compared to a baseline budget of $459,900	Completed in 20 months, 2 months ahead of schedule
Department of Commerce	Website migration	Redesign of main websites with backend feeder sites	Actual expenditures of $507,120, compared to a baseline budget of $546,530	Completed in 20 months, 4 months behind schedule
State Department of Health	Electronic benefits transfer study	Conduct a feasibility study prior to implementing an electronic benefits transfer program	Actual expenditures of $270,673, compared to a baseline budget of $326,663	Completed in 19 months, 4 months behind schedule
Department of Human Services	Vocational Rehabilitation Information System Replacement System	Develop a web-based, modern case management system	Actual expenditures of $1,990,995, compared to a baseline budget of $2,500,000	Completed in 18 months, the same number of months as scheduled
Department of Public Instruction	eTranscripts	Develop an electronic transcript processing system	Actual expenditures of $615,296, compared to a baseline budget of $608,265	Completed in 28 months, 1 month behind schedule
Information Technology Department	North Dakota Health Information Network	Allow qualified organizations to access health information	Actual expenditures of $5,129,562, compared to a baseline budget of $5,437,277	Completed in 19 months, 2 months behind schedule
Job Service North Dakota	Workforce data quality initiative	Enhanced data collection and reporting system	Actual expenditures of $1,067,028, compared to a baseline budget of $1,005,000	Completed in 23 months, 3 months behind schedule
Office of Management and Budget	Recruiting solutions project	Create an automated recruiting process	Actual expenditures of $573,895, compared to a baseline budget of $870,902	Completed in 3 months, the same number of months as scheduled

Department of Human Services - Medicaid Management Information System

The committee received information from the Department of Human Services (DHS) regarding development of a new Medicaid management information system. 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 launched the provider enrollment function in April 2013. The project has experienced several project delays. System testing is ongoing and all critical defects must be remediated before the project is complete. At the time of this report, DHS was negotiating with the project vendor, Xerox, to determine a revised completion date, which is anticipated to be in the summer of 2015. The system is anticipated to be in operation for at least 15 years upon completion. The schedule below provides information on project expenditures through September 2014:

	Budget	Expenditures	Remaining
General fund	$7,533,297	$5,225,768	$2,307,529
Federal funds	78,043,573	53,347,428	24,696,145
Other funds	2,968,137	2,193,526	774,611
Total	$88,545,007	$60,766,722	$27,778,285

Department of Human Services - Eligibility Systems Modernization Project

The committee learned the project replaces the current legacy eligibility determination systems with a fully integrated system that includes the federal Affordable Care Act requirements. The federal Affordable Care Act requirements are complex and have resulted in delays. An executive steering committee voted to temporarily suspend work on the eligibility systems modernization project. The Department of Human Services is exploring alternate system replacement options. At the time of this report, DHS was using a contingency system. The Centers for

Medicare and Medicaid Services provides enhanced federal financial participation of 90 percent for the Medicaid requirements of the system, and the enhanced federal financial participation is available through December 31, 2015. As a result, DHS issued a request for proposal for additional project assistance in order to accelerate the project's schedule and maximize the availability of federal funds for the project.

Workforce Safety and Insurance - Information Technology Transformation Program Project

The committee received information from representatives of Workforce Safety and Insurance regarding the termination of the information technology transformation program project. The project began in 2007 to replace an existing claims and policy software system. Workforce Safety and Insurance began withholding payments to Aon plc in September 2011 when software tests indicated only 30 percent completion. The contract with Aon plc was not renewed in December 2012 after Aon plc failed to provide adequate evidence that the project could be completed. Lessons learned from the project included holding venders responsible, requiring full-time onsite resources from the vendor, investing in workflow maps for business processes, and avoiding project solutions that require significant modifications to commercial off-the-shelf software. Workforce Safety and Insurance filed a lawsuit against Aon plc in March 2014 related to the project. The trial is scheduled to begin in the fall of 2016.

Secretary of State - Data Processing System Project

The committee learned the Secretary of State's data processing system project began in 2010, experienced project delays, and needed additional funding for the 2013-15 biennium. The delays and funding shortages were related to the agency's small staff with limited information technology expertise, the complexity of the agency's responsibilities, and the rapid economic growth in recent years. The project's revised budget of $5.5 million is approximately $2 million more than the original project budget of $3.7 million. Pursuant to Section 54-59-05(4), ITD borrowed $950,000 from the Bank of North Dakota at an interest rate of 1.75 percent. The $950,000 that was borrowed is anticipated to be sufficient to continue work on the project for the remainder of the 2013-15 biennium. The project budget for the 2015-17 biennium is anticipated to include funding to repay the loan as well as the additional funding needed to complete the project. The project is anticipated to be completed in the 2015-17 biennium.

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 ITD regarding the prioritization of proposed major computer software projects for the 2015-17 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 $500,000 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 24, 2014, and prioritized major executive branch computer software projects proposed for the 2015-17 biennium as follows:

General Fund Projects				
			Preliminary Project Budget	
Rank	Project	Agency	General Fund	Total Funds
1	DOCSTARS to Elite upgrade	Department of Corrections and Rehabilitation	$1,100,000	$1,100,000
2	Workforce software	Department of Corrections and Rehabilitation	618,136	618,136
	Total		$1,178,136	$1,718,136

INFORMATION TECHNOLOGY DEPARTMENT COORDINATION OF SERVICES

Section 54-59-12 provides for the review and coordination of information technology between ITD, 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 2013-2014 annual report includes 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 users' focus.
- Improve and enhance collaborative efforts.

The committee learned the University System had the following major information technology accomplishments:

- Completed new information technology facilities, including a new information technology office building on the University of North Dakota (UND) campus (November 2013) and a new data center on the UND campus (January 2014).
- Completed organizational changes, including a Vice Chancellor for Information Technology and Institutional Research, and a new Deputy Chief Information Officer.
- The University System's System Information Technology Services was renamed Core Technology Services.
- Continued work to integrate the University System into the statewide longitudinal data system. The statewide longitudinal data system includes the ability to share transcripts electronically and to conduct statistical research.
- Implemented project management for large information technology projects.
- Continued work to consolidate email tenants and research email archiving products.
- Improved security measures through collaborative efforts with ITD, including the installation of intrusion detection devices at the University System data center and in the four quadrants.

Information Technologies Building and Data Center

The committee learned the construction of the Information Technologies Building and data center was completed approximately one month behind schedule at a cost of approximately $17.1 million compared to a baseline budget of approximately $17.5 million. The Legislative Assembly authorized $12.5 million from the general fund and $5 million from University System information technology funding resulting from one-time savings or efficiencies for the projects. Over 100 technology staff are located in the University System's Information Technologies Building. The University System's data center includes 5,000 square feet of raised floor Tier 3 data center space and 5,000 square feet of equipment and operational support space. The committee conducted a tour of the Information Technologies Building and the data center on the campus of UND.

Security Attacks

The committee learned a server breach was discovered at the University System's data center in February 2014. The server contained approximately 73,000 files with a total of 87 gigabytes of data. The server contained approximately 290,000 student records dating back to 2004, 890 staff records, and no health records. A user account was compromised allowing access to the server. The data was not copied or transferred from the server. The University System contracted with AllClear ID to provide identity theft protection coverage for one year for every individual with personal information on the server at a cost of $87,000 and to provide call center services for 90 days at a cost of $132,000. The Bureau of Criminal Investigation (BCI), Federal Bureau of Investigation (FBI), and Highway Patrol conducted investigations and forensic analyses on the server. As a result of the incident, the University System continues to develop enhanced security measures, including multiple-step verification systems and intrusion detection devices.

The committee learned at least 50 employees from North Dakota State University (NDSU) received a targeted phishing email in August 2014. The user credentials for eight employees were compromised in the security attack. The University System locked ConnectND to prevent user access and worked with ITD to conduct systemwide scans to identify the extent of the attack. The servers and applications at NDSU were not compromised in the attack. North

Dakota State University is working with the FBI to investigate the attack. The University System plans to provide additional employee security awareness training and to implement other security-related information technology hardware to help prevent these types of security attacks.

The committee learned North Dakota State College of Science identified a security attack in which approximately 150 computers were infected with malware. The malware was detected on September 2, 2014, but had been present on computers since the middle of August 2014. Personal information for 15,600 students, including social security numbers, was on 68 of the 150 computers. The State College of Science contracted with AllClear ID to mail letters, to provide call center services, and to provide identity theft protection for one year for every individual with personal information on the computers. The State College of Science is in the process of conducting forensic analysis on the computers, changing administrative passwords, installing malware detection software, installing a new firewall, and reviewing information technology security plans.

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 and new technology grants and approving schools' technology plans.

The committee learned EduTech provides information technology services and professional development to North Dakota elementary and secondary schools. The PowerSchool application has been implemented in all elementary and secondary schools and was updated in the summer of 2014. EduTech staff is in the process of implementing Microsoft Office 365 in schools.

The committee learned the Center for Distance Education provides North Dakota's online distance education. 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.

North Dakota enrollments in distance education increased from 511 in 2008 to 2,749 in 2013. The course completion rate in 2013 was 94.1 percent, compared to a national benchmark of 90 percent.

Political Subdivisions

The committee learned the coordination of information technology services between ITD 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.

Recommendations

The committee recommends House Bill No. 1051 related to higher education information technology including email systems, email retention, and records retention policies. The bill amends Section 15-10-44(1) to require all institutions under the control of the State Board of Higher Education to receive email services through one consolidated system operated by the State Board of Higher Education. The bill also requires the State Board of Higher Education and the institutions under the control of the State Board of Higher Education to retain all emails for five years. The bill also clarifies that the State Board of Higher Education and the institutions under the control of the State Board of Higher Education are included in the state's record retention policies.

The committee recommends House Bill No. 1052 related to information technology reports from the State Board of Higher Education. The bill amends Sections 54-35-15.2(11) and 54-59-12 to require the Chief Information Officer of the University System rather than the Commissioner of the State Board of Higher Education to coordinate with ITD and to report to the Information Technology Committee.

INFORMATION TECHNOLOGY RELATED STUDIES

The Legislative Management assigned the committee the responsibility to study Voice over Internet Protocol (VoIP) service and the effect of this service and other technologies on the telecommunications industry, including any recommended changes in regulation and taxation and to study issues related to the development of the current radio communication plan, its costs and components, and evolving technologies that will better serve the public. The committee also received the results of a desktop support study, information technology hardware relocation and consolidation study, and an information technology staffing analysis of the Department of Public Instruction.

Voice Over Internet Protocol Service Study

The Information Technology Committee was assigned a study of VoIP service pursuant to Section 1 of 2013 Senate Bill No. 2234. The study was to include consideration of changes in regulation and taxation.

Background Information

The committee learned there were no previous studies of VoIP service. The 2013 Legislative Assembly considered Senate Bill No. 2234 that, as introduced, precluded state entities and political subdivisions from regulating VoIP and Internet Protocol (IP) services. The bill was amended to provide for a Legislative Management study of VoIP service, which was approved by the 2013 Legislative Assembly.

Issues Related to Voice Over Internet Protocol Service

The committee learned one of the issues related to VoIP service is the operability of 911 services. When using VoIP service, data and voice messages are transmitted over the Internet, and public safety authorities may not be able to determine the location of the caller. VoIP service users must register their location with the VoIP provider so the caller's location is available for public safety authorities. VoIP service may not be available during a power outage unless there is a battery backup to power an Internet connection. When VoIP service was initially available, VoIP service providers did not always collect and remit fees to political subdivisions for emergency services communications systems. As of 2012, at least 16 VoIP service providers were collecting and remitting the appropriate fees.

The committee learned another issue related to VoIP service is state and federal regulation. Traditional telephone service has been regulated by the Federal Communications Commission (FCC) since 1934, but regulations for VoIP are still being developed. The FCC is the primary regulator for VoIP, and state regulation has generally been limited to emergency services communication and consumer protection. State and local governments retain the ability to collect taxes and fees from companies that provide VoIP services. Recently, at the request of telecommunications companies, states have passed legislation to prohibit VoIP and IP service regulation at the state and local level, essentially providing that VoIP and other IP services will be regulated only at the federal level. As of 2013, 29 states, including California, Texas, Wisconsin, Illinois, and Indiana, have passed legislation to limit state and local regulation of VoIP services. Telecommunications companies assert this type of legislation provides stability as they invest in infrastructure upgrades.

The committee received information from the Public Service Commission regarding VoIP regulation in North Dakota. The Public Service Commission does not have jurisdiction to regulate VoIP services based on current North Dakota and federal laws. The Public Service Commission works to ensure that VoIP customers are receiving fair rates for communication services. The Public Service Commission also assists customers and providers to resolve conflicts, such as coverage gaps.

The committee learned from VoIP service providers VoIP and other IP services may provide technical advantages and lower costs compared to traditional landline phone service. VoIP technology can transmit video, data, and voice messages, but traditional landline phones are limited to voice messages. VoIP services have helped businesses to reduce communication costs, enhance efficiencies, and create new opportunities. The committee learned from a representative of the American Legislative Exchange Council regulating VoIP service under utility and retail laws could increase the cost of VoIP service for consumers and could decrease VoIP service and infrastructure innovation and development.

Recommendation

The committee makes no recommendation regarding the study of VoIP service.

Study of Issues Related to the State Radio Communication Plan

The committee was assigned a study of issues related to the State Radio communication plan pursuant to Section 3 of 2013 Senate Bill No. 2353. The study was to consider input from city, county, and state public safety entities, including members represented on the Statewide Interoperability Executive Committee.

Background Information

The committee learned the 2007-08 Public Safety Committee conducted a study of the Department of Emergency Services, including the Division of State Radio. The committee recommended several bill drafts, including a bill draft to provide a $7.2 million general fund appropriation to the Adjutant General for purchasing or leasing infrastructure and equipment for up to eight additional radio towers to expand coverage of the State Radio system. The 2009 Legislative Assembly did not provide funding for additional radio towers but did include funding of $500,000 in House Bill No. 1016 to study the effects of NG911 ($100,000), alternatives to constructing new State Radio towers ($75,000), and implementing a new State Radio tower site near Wales ($325,000).

The committee learned the 2009-10 Public Safety and Transportation Committee and the 2009-10 Taxation Committee studied the equity of the 911 fee structure, including consideration of fees, taxes, assessments for services, equity of services, and payments among residents in service areas; fee collection methods; and current and future funding of emergency services communications in the state. The Public Safety and Transportation Committee recommended 2011 House Bill No. 1045, which was approved by the Legislative Assembly, to provide for changes in emergency communications operating standards as recommended by the Emergency Services Communications Coordinating Committee. The committee also recommended 2011 Senate Bill No. 2046, which was not approved by the Legislative Assembly, to provide $110,302 for the operations costs of the state message switch, to provide $5,500,000 for purchasing or leasing up to 12 additional State Radio towers, and to increase fees charged for the use of the law enforcement teletype system.

The committee learned the 2013 Legislative Assembly considered Senate Bill No. 2353 that, as introduced, created a Statewide Interoperability Board and provided an appropriation of $5 million to purchase radio-related communications equipment. The bill was amended to rename the Statewide Interoperability Board the North Dakota Statewide Interoperability Executive Committee, to remove the $5 million appropriation, and to provide an appropriation of $25,000 for costs related to the Statewide Interoperability Executive Committee. The Legislative Assembly approved Senate Bill No. 2353 as amended.

State Radio Broadcasting System Infrastructure

The committee learned the State Radio broadcast system is comprised of the dispatch center located in Bismarck and remote tower locations across the state. The original broadcast equipment transmitted radio frequencies using analog signals. In 2004 the Department of Emergency Services entered an $8.1 million lease purchase agreement with Motorola for the conversion of the Division of State Radio tower infrastructure and base equipment from analog to digital. The final lease payment on the infrastructure and equipment was made during the 2011-13 biennium.

The committee learned State Radio identified coverage gaps in the broadcast system during the 2007-08 interim, and the 2009 Legislative Assembly provided $500,000 for a study of NG911 ($100,000), alternatives to constructing new State Radio towers ($75,000), and implementing a new tower site near Wales ($325,000). The 2011 Legislative Assembly provided $1,500,000 for the construction of new towers to address some of the coverage gaps, and the 2013 Legislative Assembly provided $1,175,000 for more radio towers.

The committee learned the federal Middle Class Relief and Job Creation Act of 2012 created the First Responder Network Authority (FirstNet) as an independent authority within the United States Department of Commerce National Telecommunications and Information Administration to provide emergency responders with the first high-speed, nationwide network dedicated to public safety. Upon completion of the switch from analog to digital television, the FCC established portions of the 700 megahertz (MHz) radio frequency to establish a nationwide, interoperable wireless broadband communications network for state, local, and tribal public safety personnel. The 700 MHz signal can be broadcast over large geographic areas and can provide enhanced capabilities for smartphones, tablets, laptops, and other mobile devices. FirstNet is currently seeking input from communications device manufacturers to identify cost-effective solutions for a high-speed network, including equipment capable of broadcasting and receiving 700 MHz signals. Although the network has not yet been established, this development reflects the future of public safety communications.

The committee received information from a representative of the Grand Forks Public Safety Answering Point regarding the operations of a public safety answering point (PSAP). The committee conducted a tour of the Grand Forks Public Safety Answering Point and observed the information technology hardware used at the PSAP.

The committee received information from representatives of the Attorney General's office, Highway Patrol, the Game and Fish Department regarding the agencies' use of the radio broadcast system. The Attorney General's office did not have any concerns or issues with its use of the radio broadcast system. Based on an internal assessment, 44 percent of Highway Patrol troopers reported receiving unclear transmissions multiple times per day. The Game and Fish Department's use of the radio broadcast system has decreased in recent years because of the use of mobile phones.

The committee received information from a representative of the Statewide Interoperability Executive Committee regarding the committee's activities. The Statewide Interoperability Executive Committee conducted a communications survey and received approximately 400 responses from users of the radio broadcast system. The Statewide Interoperability Committee was in the process of receiving funding commitments from state agencies and other emergency services provider organizations for a land mobile radio study. The Statewide Interoperability Committee received a proposal from Televate to conduct the study at a cost of $200,000, and the Statewide Interoperability Committee plans to proceed with the study when all of the funding commitments have been received. The Statewide Interoperability Committee anticipates providing the results of the study to the 2015 Legislative Assembly.

Recommendation

The committee makes no recommendation regarding the study of issues related to the State Radio communication plan.

Desktop Support Study

The committee received a report from ITD regarding the results of a desktop support study pursuant to Section 9 of 2013 Senate Bill No. 2021. The committee learned ITD contracted with Eide Bailly LLP to conduct the study. The study included interviewing employees from over 50 agencies and comparing agency practices to industry benchmarks. The results of the study included the recommendation for a hybrid model in which ITD would provide desktop support to 32 smaller agencies, while 16 larger agencies would provide their own desktop support.

Recommendation

The committee recommends House Bill No. 1053 related to the implementation of the results of a desktop support study. The bill creates a new section in Chapter 54-59 and amends Section 54-59-05. The bill requires approximately 35 state agencies to obtain centralized desktop support services from ITD and requires the department to make available five major desktop support services for all state agencies. The five major desktop support services include procurement services, information technology hardware inventory management services, a standardized system to track user issues, antivirus software, and mobile device management services.

Hardware Relocation and Consolidation Study

The committee received a report from OMB regarding the results of an information technology hardware relocation and consolidation study pursuant to Section 8 of 2013 Senate Bill No. 2021. The committee learned OMB contracted with UmmelGroup International, Inc., to conduct the study. Based on the results of the study, consolidation of the information technology equipment is unlikely to provide significant cost-savings, but relocating the hardware to the ITD data centers would increase physical and network security. The recommendations of the study include consolidating and relocating the information technology hardware from the Public Service Commission, the Department of Mineral Resources, and the State Water Commission to ITD. The study results recommended not consolidating and relocating the hardware from the Attorney General's office because of the federal security requirements related to the Criminal Justice Information Sharing (CJIS) Initiative. The recommendation is to consolidate only the hardware and not information technology staff. Benefits of consolidation include enhanced security, improved backup and redundancy measures, and the potential for up to 15 percent time saving for the agencies' information technology staff. The results identified that the risks of consolidation include personality conflicts, loss of key agency personnel, and additional time required to learn a new system. The committee learned OMB will not be proposing any legislative changes related to information technology hardware consolidation and relocation nor will it be reflecting the consolidation recommendations in the executive budget.

Recommendation

The committee recommends Senate Bill No. 2051 related to the implementation of the results of a hardware relocation and consolidation study. The bill exempts the information technology hardware operated by the Attorney General's office from consolidation and relocation and removes the ability of OMB to grant exemptions from the required use of hosting services and other information technology-related services. As a result, the information technology hardware operated by the Department of Mineral Resources, Public Service Commission, and State Water Commission would be relocated and consolidated to ITD.

Information Technology Staff Analysis

The committee received information from the Department of Public Instruction (DPI) regarding the results of an information technology staffing analysis pursuant to Section 15 of 2013 House Bill No. 1013. Eide Bailly LLP completed the analysis and made the following recommendations:

- Establish a clear organizational separation between the research and management information system functions within DPI;
- Maintain the current organizational structure of 4 full-time equivalent (FTE) programmer positions within DPI;

- Transfer 2 FTE internal management information system support positions to ITD;
- Establish a measurement and accountability section consisting of 4 FTE positions within DPI;
- Establish a shared technical support function with the Educational Technology Council; and
- Complete a planned data mapping project to confirm DPI's use of collected data.

Recommendation

The committee makes no recommendations regarding the information technology staff analysis.

OTHER INFORMATION

2015-17 Biennium Rates and Budget Request

The committee received information from representatives of ITD regarding technology rates for the 2015-17 biennium. Assuming state agencies purchase the same level of services in the 2015-17 biennium as the most recent 12-month period, the department estimates fee changes for the 2015-17 biennium will generate approximately a total of $3.3 million more revenue to the department. A $20 million bond for ConnectND will be fully paid in July 2014 resulting in savings of approximately $1.4 million for the 2015-17 biennium.

The following is a summary of select rates for the 2015-17 biennium compared to the 2013-15 biennium:

Description of Service	2013-15 Budget Rate	2015-17 Budget Rate
Analyst/project manager	$69/hour	$73/hour
Analyst II	$75/hour	$81/hour
Analyst III	$83/hour	$95/hour
Senior analyst/senior project manager	$94/hour	$105/hour
Architect	$99/hour	$122/hour

The committee requested information regarding the ITD budget request for the 2015-17 biennium, including information on total funding being requested compared to the 2013-15 legislative appropriation and information on major increases and decreases. The committee learned the department had not submitted its 2015-17 budget request at the time of this report, 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 state's information technology network. For the 2013-15 biennium, Cyber Security Solutions Division, ManTech Mission, Cyber, and Intelligence Solutions Group performed the testing. The testing included external vulnerability assessment, internal vulnerability assessment, application vulnerability assessment, security assessment of nonconsolidated information technology services, and penetration testing. The following is a summary of the findings:

Test	Findings
External vulnerability assessment	There were three high-risk vulnerability findings, seven medium-risk vulnerability findings, and one low-risk vulnerability finding. The findings were 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 24 high-risk vulnerability findings and 3 medium-risk vulnerability findings. The findings are classified into two categories--misconfigured systems or applications and operating systems or software applications that were missing critical security patches.
Application vulnerability assessment	The NDGOV State Portal has one medium-risk vulnerability finding, and the CJIS application has two medium-risk vulnerability findings.
Security assessment of nonconsolidated information technology services	The physical security measures varied greatly between the agencies depending on the specific mission of the agency assessed. The physical security of the agencies assessed ranged from adequate to very good.
Penetration testing	The test team was able to access either user- or system-level access during five of the nine executed scenarios. The test team did not succeed in achieving system access on the remaining four scenarios.

The committee learned the findings are typical with an enterprise system that is similar in size to the state of North Dakota's system. The recommendations included maturing a structured patch management program, segregating critical servers and development systems, requiring the use of encrypted protocols for remote management, restricting access to protocols for remote management from the Internet, and developing a formal vulnerability scanning program for nonconsolidated services.

Statewide Longitudinal Data System Initiative

The committee received information from representatives of ITD and the University System regarding the statewide longitudinal data system. The Information Technology Department and the University System continue to support the development of the statewide longitudinal data system both technically and professionally. The benefits of the system include the ability to conduct research including a project completed in September 2014 related to remediation classes.

Health Information Technology

The committee learned the North Dakota Health Information Network became operational in March 2014. The project was completed under budget at a cost of approximately $5.1 million, but two months behind schedule. All of the major hospitals in the state are connected to the system and over 90 percent of all hospitals in the state are anticipated to have electronic health records implemented by the end of calendar year 2015. As of September 2014, approximately 400,000 users are registered in the North Dakota Health Information Network. Health care providers reported that the health information technology revolving loan fund is a major contributing factor in the implementation of an electronic health records system. Patients can view their medical records through the patient portal, but may have to access multiple portals to view all of their medical records because each health care provider has a separate portal for its patients. Additional features and applications may be added to the network in the future, including an image exchange viewer to allow x-rays and other medical images to be shared electronically.

The committee learned ITD is in the process of developing a plan for a North Dakota Health Information Hub. The hub is a project to streamline the management of health information by integrating information from multiple sources into one consolidated hub. The hub could be used to create registries and would allow health information to be exchanged securely between health care providers, pharmacies, law enforcement, school systems, and other state and federal agencies.

New Information Technology Building

The committee learned ITD moved into a new building in August 2014. The building is approximately 85,000 square feet and allowed the department to consolidate staff from five separate locations into one location. The lease rate is $17 per square foot for 10 years. The terms of the lease allow the department to renew the lease for an additional 10 years. The committee conducted a tour of the building located at 4201 Normandy Street, Bismarck.

Information Technology Staff Transfer

The committee learned 4 FTE positions were transferred from Workforce Safety and Insurance to ITD pursuant to 2013 Senate Bill No. 2021. Workforce Safety and Insurance's average monthly billable time per FTE position for fiscal year 2014 was 86 percent for a total of $494,305 resulting in an increase of $173,705 in the agency's costs. The Information Technology Department and Workforce Safety and Insurance will continue to collaborate to determine the most efficient billing methods and rates.

High-Speed Internet Initiative

The committee received information regarding the Dakota Fiber Initiative. The Information Technology Council of North Dakota is in the process of developing the Dakota Fiber Initiative to provide affordable, world-class Internet speed and reliability to every individual in the state. The Information Technology Council of North Dakota completed an Internet supply and demand analysis in Fargo and West Fargo and is in the process of completing a statewide assessment at the time of this report. The Information Technology Council of North Dakota is exploring policies to encourage telecommunications companies to increase the availability and affordability of high-speed Internet across the state. The committee observed a demonstration of broadband capabilities which included browsing websites on two computers with varying Internet connection speeds.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned three studies:

- Section 1 of Senate Bill No. 2078 (2013) directed a study of the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute.
- By Legislative Management Chairman directive, the committee was delegated the responsibility to review changes to the state's driving under the influence (DUI) laws under 2013 House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders.
- By Legislative Management Chairman directive, the committee was delegated the responsibility, in collaboration with the interim Higher Education Funding Committee, to study the intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011.

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.
- For statutory and constitutional revision.
- To review any executive order issued by the President of the United States which has not been affirmed by a vote of the Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President (Section 54-03-32).

The Legislative Management delegated to the committee the responsibility to receive the following six 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 (Section 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 (Section 54-61-03).
- A biennial report from the North Dakota Racing Commission regarding the operation of the commission (Section 53-06.2-04).
- A report from the director of the North Dakota Lottery regarding the operation of the lottery (Section 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 (Section 50-06-31).
- A report from the Governor regarding the status of gender balance on appointive boards, commissions, committees, and councils and within the Governor's appointive cabinet for the 2013-15 biennium (2013 House Bill No. 1001, Section 4).

Committee members were Senators David Hogue (Chairman), Kelly M. Armstrong, John Grabinger, Stanley W. Lyson, Mac Schneider, and Margaret Sitte and Representatives Lois Delmore, Ben W. Hanson, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, and Gary Paur.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

ASSESSMENT OF FEES BY COURTS

Background

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 Class AA felony.

Section 29-26-22 also provides 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 fee 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 indigency. 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.

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 $55 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 the requirement 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 $35 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.

Section 12.1-32-16 provides 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, by resolution, to 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, by ordinance, to 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.

As reported by the judicial branch, during the 2011-13 biennium, the judiciary collected $9,997,087 in fees as follows:

- Criminal court administration fees - $5,474,416.
- Indigent defense recoupment - $347,152.
- Indigent defense application fee - $186,436.

- Indigent defense administration fee - $1,786,383.
- Restitution collection assistance fund - $47,409.
- Community service supervision fee - $53,837.
- Court facilities improvement and maintenance fund - $1,496,381.
- Victim witness fee (county) - $605,074.

The total number of criminal cases during the 2011-13 biennium was 62,073.

2013 Senate Bill No. 2078

Senate Bill No. 2078, introduced at the request of the Supreme Court, would have consolidated the seven different fees imposed by the court in criminal cases into a single fee, the amount of which would vary based upon the grade of the offense. The bill would have replaced the individual fees with a fee of $250 for a Class B misdemeanor, $400 for a Class A misdemeanor, $600 for a Class C felony, $800 for a Class B felony, and $1,000 for a Class A or Class AA felony. The bill would have authorized the court to waive the fee upon a showing of indigency.

The bill also included a formula for the distribution of the fees collected. As amended by the Senate, the bill would have distributed the fees as follows:

- 68.2 percent deposited in the state general fund.
- 14.5 percent deposited in the indigent defense administration fund.
- 12.2 percent deposited in the court facilities improvement and maintenance fund.
- 4.7 percent deposited monthly in the county treasury if the county in which the fee is assessed has authorized acceptance of the fee by resolution under Section 27-01-10. If the county has not adopted such a resolution, this amount would be deposited in the state general fund.
- 0.4 percent deposited in the community service supervision fund.

Testimony in support of the bill indicated the bill had broad support in the judiciary. The testimony also indicated a consolidated fee would result in significant time-savings for the court. Other testimony expressed concerns about including the victim witness fee in the consolidated fee since that fee remains with the county. It was explained counties vary greatly in their efforts to collect this fee. The bill was amended and passed to provide for a study of the assessment of fees.

Testimony and Committee Considerations

In its study of the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute, the committee received information and testimony from a district judge, a representative of the state court administrator's office, several state's attorneys, a representative of the North Dakota Association of Counties, a representative of the Commission on Legal Counsel for Indigents, and a county commissioner. The committee's deliberations focused primarily on whether to recommend legislation that would allow for the consolidation of some or all of the statutory fees imposed upon offenders.

Testimony in support of consolidating all statutory court fees into a single fee indicated the consolidation would eliminate manual calculations and simplify the district clerk of court's overall bookkeeping duties. The testimony also indicated the consolidation of court fees would streamline the process, save time, create more efficiency, and create less judicial discrepancy about which fees to impose and which fees not to impose. According to the testimony, the current system of individual fees requires judges and court staff to consider the fees six times for each criminal case. Under the current system multiple fees are being charged to defendants and there is not a unified distribution of the money collected. Due to the lack of uniformity and guidance, it was noted there is a loss of efficiency. As a result, state's attorneys, county and state clerks, probation officers, and the courts must make priority decisions when the defendant is not able to pay all the court-ordered fees at the time of the original sentencing. Other testimony in support of consolidation of court fees indicated a single fee with a percentage allocated to various funds would save future programming costs and staff time if the state would decide to fund more programs or change the amounts dedicated to each program.

The committee received considerable testimony regarding the victim witness fee and the effect of consolidation of fees on those counties that routinely collect the fee. Under Section 27-01-10, the $25 victim witness fee is to be allocated 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 crimes. The victim witness fee is the only fee considered in the proposed consolidation which is retained by the county. According to the testimony, the judges in several judicial districts in the state diligently and routinely impose the victim witness fee while other judicial districts seldom collect the fee. In those counties in which the fees are routinely collected, the fees are used to fund county victim witness coordinators. It was argued that to include the victim witness fee in the consolidation of court fee formula as was proposed in Senate Bill No. 2078 would provide a windfall to counties and courts that do not exercise their statutory discretion in assessing the fees and punishes those counties and courts that routinely exercised that authority and collect the fee. The testimony indicated those counties that routinely collect the fee could incur up to a 30 percent decrease in victim witness fees under the distribution formula proposed in the 2013 legislation while counties that did not routinely collect the victim witness fee could enjoy a 500 percent windfall. The testimony urged the committee either to exclude the victim witness fee in the consolidation of fees or to find a fee system that is less discretionary and more equitable so those counties that routinely impose the victim witness fee would not incur a significant loss.

During the course of the committee's study of the consolidation of court fees, the committee considered alternative bill drafts, both of which would have provided for the consolidation of court fees. The first bill draft would have consolidated the court administration fees, the community service supervision fee, the victim witness fee, and the restitution collection assistance fee into a single fee of $250 for a Class B misdemeanor; $400 for a Class A misdemeanor; $600 for a Class C felony; $800 for a Class B felony; and $1,000 for a Class A or Class AA felony. The bill would have distributed the fees collected to the state general fund, the indigent defense administration fund, the court facilities improvement and maintenance fund, the community service supervision fund, and to the counties in accordance with Section 27-01-10. The distribution of those, with the exception of the amount distributed to the counties to replace the victim witness fee, was based upon a formula intended to be revenue neutral. The bill draft also would have held harmless, for four years, those counties that collected more than $9,000 in victim witness fees in state fiscal year 2012. The bill draft provided for state fiscal years 2015 through 2018, if a county received more than $9,000 in fees assessed for funding crime victim and witness programs in fiscal year 2012, that county would be entitled to receive in each fiscal year, 6.4 percent of the fee imposed or the amount received by that county in state fiscal year 2012, whichever amount was greater.

Testimony in opposition to this bill draft indicated the counties for which the bill draft would hold harmless would be limited to the amount collected in fiscal year 2012. According to the testimony, the victim witness fees collected in those counties increased in 2013 and were expected to do the same in 2014. By limiting those counties to the 2012 amount, the testimony indicated counties would not have any incentive to collect more than was collected in fiscal year 2012. The testimony also opposed the provision in the bill draft which would make those counties held harmless subject to the formula-based distribution after four years.

The second bill draft considered by the committee would have consolidated all court fees into a single fee; however, this bill draft would have exempted the victim witness fee from the court fees being consolidated. The bill draft contained the same single fee amounts as the first bill draft. However, the formula for the distribution of the fees collected did not include a distribution to the counties to replace the victim witness fee. Under the second bill draft, the victim witness fee collection and distribution would have been unchanged.

Testimony in support of the second bill draft was received from several state's attorneys, a victim witness coordinator, and a county commissioner. The testimony indicated to preserve the level of funding for local community programs that assist victims which the counties are currently receiving from the collection of victim witness fees, the second bill draft would be preferable.

Other general testimony relating to both bill drafts expressed concern either bill draft could create an uncertainty for the funding for the Commission on Legal Counsel for Indigents. The Commission on Legal Counsel for Indigents is funded in part by the court administration fee and the indigent defense application fee. Concern was also expressed as to whether judges would be more inclined to impose one large consolidated fee or if the judges would waive the fee at a greater rate than is done currently. The testimony indicated the current fee structure is working well.

Testimony from the judicial branch indicated support for the consolidation of as many court fees as possible. The testimony suggested including the indigent defense application fee and the indigent defense recoupment in the consolidation as well. To clarify a concern as to whether a judge could waive all or part of the fee upon a showing of indigency, the committee amended the second bill draft to include that option.

Several members of the committee expressed concerns about whether the consolidation is needed and the effect it may have on the funding of indigent defense in the state. It was noted while it is unclear if the consolidation of fees would have any effect on the funding for indigent defense, it is not likely the Legislative Assembly would take away a special fund source without replacing it with general fund support. Another committee member understood the need for streamlining and efficiency in the collection of fees, but indicated the emphasis should be on consistency in the collection among the district judges.

Conclusion

The committee makes no recommendation with respect to the consolidation of court fees.

DRIVING UNDER THE INFLUENCE LAWS REVIEW

By Legislative Management Chairman directive, the committee was delegated the responsibility to review changes to the state's driving under the influence laws under 2013 House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders.

Summary of Driving Under the Influence Law Changes by Offense

The following table summarizes the penalties and requirements under House Bill No. 1302 for first and subsequent incidents of driving under the influence. In addition to the penalties and fines listed below, a person is required to pay $250 in court fees if convicted of a Class B misdemeanor, $325 in court fees if convicted of a Class A misdemeanor, and $525 in court fees if convicted of a Class C felony.

Criminal Penalties for Driving Under the Influence Offenses					
Offense	**Level**	**Fine**	**Fees**	**Jail**	**Other**
First offense within seven years	Class B misdemeanor	$500	$250		Evaluation
First offense within seven years and alcohol content of .16 or greater	Class B misdemeanor	$750	$250	2 days	Evaluation
Second offense within seven years	Class B misdemeanor	$1,500	$250	10 days with 48 hours consecutive	Evaluation and 24/7 sobriety program for 12 months
Third offense within seven years	Class A misdemeanor	$2,000	$325	120 days	Evaluation, one year supervised probation with requirement for 24/7 sobriety program
Fourth offense within lifetime	Class C felony	$2,000	$525	One year and one day imprisonment	Evaluation, two years' supervised probation with requirement for 24/7 sobriety program

Additional Provisions of House Bill No. 1302

In addition to the changes to the penalties for first and subsequent driving under the influence offenses, House Bill No. 1302 included the following provisions:

- Increased the look-back provision for second and third offenses from five years to seven years - Section 39-08-01(5)(b), (c).
- Created a felony for the fourth or subsequent offense regardless of time, instead of the fifth or subsequent offense in seven years as previously provided by law - Section 39-08-01(5)(d).
- Made the failure to submit for testing an offense of driving under the influence - Section 39-08-01(2).
- Created the crime of criminal vehicular homicide for driving under the influence that results in death, a Class A felony, with a penalty of three years' imprisonment as a minimum mandatory and 10 years' imprisonment for a second offense as a minimum mandatory - Section 39-08-01.2(1).
- Created the crime of criminal vehicular injury for driving under the influence offense that results in substantial bodily injury or serious bodily injury, a Class C felony, with a penalty of one year's imprisonment as a minimum mandatory and two years' imprisonment as a minimum mandatory for a second or subsequent driving under the influence offense - Section 39-08-01.2(2).
- Created a Class C felony for a second conviction for driving while under the influence with a minor in the motor vehicle - Section 39-08-01.4.
- Required a law enforcement officer to request a search warrant to force a blood, breath, or urine test unless there are exigent circumstances - Section 39-20-01.1(3).

- Reduced the revocation for failure to submit to testing from one year to 180 days for a first offense, from three years to two years for a second offense, and from four years to three years for a third or subsequent offense - Section 39-20-04.1(1)(a), (b), (c).
- Allowed curing the revocation for failure to submit to testing by pleading guilty for any offense, not just the first offense as was previously provided by law - Section 39-20-04(2).
- Allowed law enforcement to immediately take an individual into custody without a warrant if there is reasonable cause to believe the individual violated the court order to participate in the 24/7 sobriety program - Section 29-06-15(3).

Testimony and Committee Considerations

In its review of changes to the state's DUI laws under House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders, the committee received extensive testimony from numerous sources including the Attorney General; the Department of Transportation; the State Court Administrator; a district judge; a juvenile court director; the North Dakota Commissioner for the Interstate Commission for Adult Offender Supervision; the North Dakota Association of Counties; the North Dakota Association of Criminal Defense Lawyers; state's attorneys; defense attorneys; law enforcement agencies; a private company that provides drug and alcohol testing, monitoring, tracking, and treatment; and members of the public. The committee's review of the changes to the state's DUI laws under House Bill No. 1302 focused on the issues of 24/7 sobriety program concerns, 24/7 sobriety program for juveniles, look-back period for DUI offenses, dual conviction issues, implied consent and right to cure, participation in drug court, the Interstate Compact for Adult Offender Supervision, and technical corrections.

24/7 Sobriety Program Concerns

The committee received extensive testimony related to the impact of House Bill No. 1302 on the 24/7 sobriety program. As a result of the 2013 law, courts are required to order the offender to 12-months participation in the 24/7 sobriety program as a mandatory condition of probation for second and third DUI offenses within seven years and two years participation in the 24/7 sobriety program as a condition of probation for fourth and subsequent offenses within the offenders lifetime. As of July 1, 2014, at an average cost of $537 over the period of participation, there were:

- 1,532 total participants statewide in the 24/7 sobriety program, of which 586 are participating with secure continuous remote alcohol monitoring (SCRAM) bracelets;
- 432 DUI probationers in 39 counties statewide in the 24/7 sobriety program--73 for first-time DUI, 292 for second-time DUI, 47 for third-time DUI, and 20 for fourth-time DUI; and
- At least 79 individuals who volunteered or opted into the 24/7 sobriety program in order to receive a temporary restricted driver's license.

Testimony from sheriff's departments indicated the expanded use of the 24/7 sobriety program is putting a strain on the resources of sheriff's departments. Several departments indicated the hiring of extra personnel was necessary to handle the increased workload. It was suggested allowing local law enforcement agencies and private contractors to provide additional testing sites for the 24/7 sobriety program would remove some of the burden from sheriff's departments. The committee received testimony from a private contractor who demonstrated various testing and tracking devices and provided information on the services available. The testimony indicated because the state limits the amount that can be charged for the alcohol testing--$1 per test or $2 per day--it is difficult for private companies to compete.

The testimony included concerns about the issuance of temporary restricted permits for offenders conditioned on continued participation in the 24/7 sobriety program with no exceptions for out-of-state defendants, for military members who are deployed, and for drivers who have completed intensive treatment. Another issue of concern was the requirement of a court order mandating participation in the 24/7 sobriety program before being permitted to participate in the program. Because participation in the program is required to obtain the temporary restricted permit and the court order mandating participation may not be issued for months after the offense, the testimony indicated the statutes are in need of harmonization to allow for participation in the 24/7 sobriety program before sentencing. The testimony also suggested Section 39-08-01(5)(f) and (h) be harmonized with respect to the court's authority to suspend a portion of jail time on a third or subsequent DUI upon completion of rehabilitation and 24/7 sobriety program before sentencing under subdivision f and the authority to allow a day for day credit against a sentence for a rehabilitation program that an offender does after sentencing under subdivision h. Finally, the testimony suggested clarification is needed that the 24/7 sobriety program is a condition of probation and may not be ordered as part of the sentence.

The committee considered a bill draft that would require the law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if the individual provides documentation that the Department of Transportation has issued the individual a temporary restricted license conditioned on participation in the program. Testimony in support of the bill draft indicated this would resolve some of the issues that have arisen between the administrative and criminal sides of the process.

The committee also considered a bill draft to clarify when determining the amount of time the individual must participate in the 24/7 sobriety program, the sentencing court may credit for the time the individual already has served on the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license. The bill draft also provided the 24/7 sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. According to testimony in support of the bill draft, an individual would not serve less time on the program than is required by law, but the individual could serve more time. Other testimony expressed concern as to whether a judge is authorized keep an offender on the 24/7 sobriety program once probation is completed.

24/7 Sobriety Program for Juveniles

Section 2 of House Bill No. 1302 provided if a child is adjudicated delinquent for a DUI offense, the child is required to participate in the 24/7 sobriety program. Under the law, the maximum amount of time a juvenile can be sentenced to the 24/7 sobriety program is nine months, and there is not a minimum sentence. As of July 2014, 60 juveniles were in or had completed the 24/7 sobriety program. According to the testimony, the average time in the 24/7 sobriety program was two to four weeks for first-time minor in consumption juvenile offenders and four to eight weeks for first time DUI juvenile offenders. The committee received testimony the juvenile court was concerned with the mandatory use of the 24/7 sobriety program for first time offenders when there may be no indication that the child is likely to repeat the offense. Requiring the program when it may not be something a child needs may have unintended consequences, such as missing part of the school day, loss of employment, or other disruptions to activities that generally have a positive influence on a child's behavior. The testimony also discussed the challenges to a parent who may have to take time off from work twice a day to drive the child to the twice-per-day testing, including the financial cost and putting the parent's employment at risk. It was suggested a better approach would be to allow the court the discretion to order the 24/7 sobriety program for a first offense while still mandating its use for a second or subsequent alcohol-related offense.

The committee considered a bill draft that would allow the court discretion in whether to order the juvenile to participate in the 24/7 sobriety program for a first offence. The bill draft would provide if a child is subject to informal adjustment or is found to be delinquent or unruly due to a DUI violation, the court would have the court discretion to require the juvenile to participate in the 24/7 sobriety program for a first violation or occurrence and would be required to order the juvenile participate in the program for a second or subsequent violation. Testimony in support of the bill draft indicated if the discretionary aspect were changed for the first offense, the juvenile court could determine if the 24/7 sobriety program is appropriate for that juvenile. The testimony noted the law does not impose the mandatory 24/7 sobriety program for the first DUI offense for adult offenders, but it does impose the sanction for first offense juvenile DUI or alcohol-related offenders.

Look-back Period for DUI Offenses

Under House Bill No. 1302, the look-back period for fourth or subsequent DUI offenses was changed from seven years to a fourth or subsequent DUI within the offender's lifetime. The committee received testimony expressing concerns about the ability to prove cases for which the records may no longer exist. According to the testimony, to prove a prior offense, courts require certified judgments indicating advisement of rights and the status of counsel for each prior conviction. It was noted under court rules, clerk of court offices may dispose of misdemeanor case records after seven years, causing documentation retrieval for a majority of cases pre-2007 nearly impossible. The testimony noted Section 39-08-01(3) directs the court to take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the Director of the Department of Transportation. According to the testimony, the Department of Transportation has a similar seven-year retention policy and therefore the certified documents from the department may not contain all previous DUI offenses.

The committee considered a bill draft that would limit the look-back period to 15 years for fourth and subsequent DUI offenses. Testimony in support of the bill draft indicated very old offenses can be difficult to prove especially if the offenses occurred in another state. Because convictions are an element of the crime, the convictions must be proved. It was noted in time more records will be computerized and more available.

Dual Conviction Issues

The committee received testimony whether it could be considered double jeopardy to charge an offender with the offense of refusal to submit to testing and the offense of DUI. Testimony indicated because the crimes have separate elements, it is not double jeopardy to charge the same person for both crimes. According to the testimony, the

Legislative Assembly was aware of the two separate crimes and that it is what was intended. The committee received information on the status of two cases on appeal to the North Dakota Supreme Court based upon double jeopardy concerns. At the district court level, one judge found the statute constitutional and the other judge found the statute unconstitutional. As of November 12, 2014, the opinions of the Supreme Court on both cases were pending.

Testimony from the Department of Transportation indicated the department, in coordination with the Attorney General, had implemented a process to address the dual convictions by entering the first and second conviction in a dual conviction for a singular offense as a first conviction. According to the testimony, this process had the net impact of providing the required suspension time for a first conviction and provides for a second conviction on the records for enhancement in the event of a third conviction.

The committee considered a bill draft that would clarify, for purposes of conviction, the test refusal and the DUI charge are intended to be alternative charges. Testimony in support of the bill draft indicated while there are several options under which an individual can be convicted of DUI, the individual only can be convicted of one of those offenses. The committee amended the bill draft to address the administrative sanctions of suspension or revocation of an operator's license. The bill draft, as amended, provided for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal (subdivisions a, b, c, or d and subdivision e of Subsection 1 of Section 39-08-01) are deemed to be a single violation. The amended version of the bill draft did not include the language regarding the test refusal and the DUI charge as alternative offenses which was included in the earlier version. According to the testimony, the effect of the bill draft would be that for criminal purposes, the DUI charge and the test refusal are counted as two offenses, but the two offenses would be considered a single offense for purposes of administrative sanctions.

Implied Consent and Right to Cure

The committee received testimony that in light of the severity of the consequences for refusing to submit to testing, it is important to ensure implied consent warnings are being read to offenders. The testimony indicated the warning is intended to be read verbatim from the DUI form which states a refusal is a criminal offense. Law enforcement testimony indicated officers are expected to read the information directly from the prepared form. According to the testimony, law enforcement has been diligent in reading implied consent warnings to offenders.

The committee also received testimony regarding whether officers should allow a defendant to cure a refusal. According to the testimony, although the law is silent on the right to cure a refusal, most officers have been operating on the assumption that, if it was reasonable, a cure should be allowed if the defendant requests to cure.

The committee considered a bill draft to address the issue of implied consent. Under the bill draft, a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information required in Section 39-20-01(3)(a). Testimony in support of the bill draft indicated while the vast majority of law enforcement officers are providing the implied consent information, the warning becomes even more important now that refusal is a criminal offense. Other testimony indicated concerns existed among state's attorneys regarding the proposed change to the implied consent requirements.

The committee also considered a bill draft that would give the individual the opportunity to cure a refusal of a test. The bill draft would require the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test. Testimony in support of the bill draft indicated without the ability to cure a refusal, the constitutionality of the law may be in question. The testimony indicated the bill draft would clarify that the accused has a right to cure the refusal.

Participation in Drug Court

Drug court is a court-supervised, treatment-oriented program that targets nonviolent participants whose major problems stem from substance abuse. The drug court program is a voluntary program that includes regular court appearances before the drug court judge, rigorous probation, drug testing, individual and group counseling, and regular attendance at support group meetings. Candidates must have multiple prior misdemeanor or felony drug offenses, or in DUI cases must have three or more DUIs. The committee received testimony the mandatory minimum sentences in the 2013 legislation eliminated the incentives for a DUI offender to participate in the drug court process. The testimony indicated the impact of the 2013 legislation on the drug court program was an oversight.

To address the issue, the committee considered a bill draft that would provide all but 10 days of the minimum mandatory sentence required for a defendant charged with a third or subsequent DUI offense may be suspended on the condition the defendant successfully complete a drug court program approved by the Supreme Court.

Testimony in support of the bill draft indicated abrogating the ability to use drug courts and imposing minimum mandatory penalties created substantial unintended consequences. According to the testimony, the drug court serves as a valuable incentive for a repeat DUI offender.

Interstate Compact for Adult Offender Supervision

The committee received testimony regarding a conflict with the Interstate Compact for Adult Offender Supervision which was created by House Bill No. 1302. According to the testimony, the participation in the 24/7 sobriety program as a mandatory condition of program for second offenses would put a convicted second offense offender under the Interstate Compact if the offender relocated outside North Dakota during the probation period. If the offender relocates out of the state, the commission is faced with attempting to transfer offenders to a receiving state that may not have a 24/7 sobriety program. It was noted in the past, when faced with that knowledge, the Department of Corrections and Rehabilitation would request the court to modify the original court order. Because the 24/7 sobriety program is now mandatory, the court cannot legally modify its original order. It was recommended the language be changed to allow participation in a program that is equal to the 24/7 sobriety program if the offender lives in another state. It was also suggested if the language of Section 39-08-01(5)(b) were modified to require the 24/7 sobriety program participation for a period of less than one year, the second offense sentence would not trigger the Interstate Compact.

The committee considered a bill draft that would change the mandatory participation in 24/7 sobriety program for second and third DUI offenses from one year to 360 days. The bill draft also would change the probation length for third offenses from one year to 360 days. Testimony in support of the bill draft indicated the changes would eliminate the conflict with the Interstate Compact.

Technical Corrections

The committee considered a bill draft intended to remove arcane language in Section 39-06-03(3), which deals with a prohibition on the issuance of an operator's license to a habitual drunkard. The bill draft also amends Section 30-20-15 to change from 15 to 14 the number of days a driver must wait to get a temporary restricted operator's license. Testimony in support of the bill draft indicated this change would make the waiting period consistent with other provisions in that section. Testimony regarding the change to Section 39-06-03(3) indicated the provision in that subsection has never been used.

At the conclusion of the consideration of the bill drafts relating to changes to the state's DUI laws, the committee consolidated all the recommended DUI-related bill drafts into a single bill for presentation to the Legislative Management. Testimony in support of the consolidation indicated a single bill would allow all the issues to be considered at the same time by the Legislative Assembly rather than stretching out a number of bills throughout the legislative session.

Recommendation

The committee recommends Senate Bill No. 2052 to address issues related to the state's DUI laws. The bill would:

- Require a law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if the individual provides documentation the Department of Transportation has issued the individual a temporary restricted license conditioned on participation in the program;
- Clarify when determining the amount of time the individual must participate in the 24/7 sobriety program, the sentencing court may credit for the time the individual has already participated in the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license;
- Provide the 24/7 sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence;
- Allow the court discretion in whether to order a juvenile to participate in the 24/7 sobriety program;
- Limit the look-back period to 15 years for fourth and subsequent DUI offenses;
- Provide, for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal are deemed to be a single violation;
- Provide a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information required in Section 39-20-01(3)(a);
- Require the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test;
- Provide all but 10 days of the minimum mandatory sentence required for a defendant charged with a third or subsequent DUI offense may be suspended on the condition the defendant successfully complete a drug court program approved by the Supreme Court;

- Change the mandatory participation in 24/7 sobriety program for second and third DUI offenses from one year to 360 days and change the probation length for third offenses from one year to 360 days; and
- Make technical changes to remove arcane language and correct inconsistent time frames.

NORTH DAKOTA UNIVERSITY SYSTEM INTELLECTUAL PROPERTY POLICIES

By Legislative Management Chairman directive, the committee was delegated the responsibility, in collaboration with the interim Higher Education Funding Committee, to study the intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011. The committee conducted a joint meeting with the Higher Education Funding Committee to gather information regarding research activities at higher education institutions, to receive an overview of intellectual property policies and procedures, and to review the process used to commercialize intellectual property.

Background

According to the American Intellectual Property Law Association, intellectual property is property that results from the fruits of mental labor. The United States legal system provides certain rights and protections for owners of such property. The rights and protections are based on federal patent, trademark and copyright laws under Titles 17 and 35 of the United States Code and state trade secret laws under Chapter 47-25.1. In general, patents protect inventions of tangible things, trademarks protect names or symbols that identify the source of goods or services, and copyrights protect various forms of written and artistic expression.

A patent is a document, issued by the federal government, which grants to its owner a legally enforceable right to exclude others from practicing the invention described and claimed in the document. Congress allows this right, for a term ending 20 years from the date of filing of an application for patent, to encourage the public disclosure of technical advances and as an incentive for investing in their commercialization.

Trademarks and service marks are words, phrases, designs, sounds, or symbols and are used on or in association with goods and in association with services to be performed. Trademark rights arise either by filing a mark with the United States Patent and Trademark Office based on a bona fide intent to make use of the mark on a product or in association with a service that will soon be offered to the public or by actually using the mark in commerce on a product or in association with a service.

Copyright is a statutory property right that grants to creators certain exclusive rights in their creations for a limited duration. Its purpose, as expressed in the United States Constitution, is to promote the progress of science and useful arts by providing economic incentive for creative activity. Copyright protects intangible original works of authorship which are fixed in a tangible medium of expression. Copyright protects works, such as books, pictorial, graphic and sculptural works, music, photographs, movies, and computer programs.

With respect to North Dakota, the Legislative Assembly has enacted chapters pertaining to copyrights (47-21), sound recordings (47-21.1), royalties contracts (47-21.2), trademarks (47-22), trade names (47-25), and trade secrets (47-25.1). In addition to the statutory approach, Section 15-10-17, in part, authorizes the State Board of Higher Education to:

1. Adopt rules to protect the confidentiality of student records, medical records, and, consistent with Section 44-04-18.4, trade secret, proprietary, commercial, and financial information.
2. Authorize and encourage North Dakota University System entities to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.
3. Adopt rules promoting research, encouraging development of intellectual property and other inventions and discoveries by University System employees, and protecting and marketing the inventions and discoveries. The rules must govern ownership or transfer of ownership rights and distribution of income that may be derived from an invention or discovery resulting from research or employment in the University System. The rules may provide for transfer of ownership rights or distribution of income to a private, nonprofit entity created for the support of the University System or one of its institutions.

Testimony and Committee Considerations

In its study of intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent

Reform Act of 2011, the committee's considerations focused on three areas: intellectual property policies and procedures; research activities at higher education institutions; and the process used to commercialize intellectual property.

Intellectual Property Policies and Procedures

In accordance with Section 15-10-17, the State Board of Higher Education adopted North Dakota University System Policy No. 611.2. This policy, which pertains to intellectual property, became effective June 20, 2002. The board also adopted Policy No. 611.6, which pertains to confidential proprietary information. This policy became effective on April 18, 2002.

The committee reviewed Policy No. 611.6, which reiterates that certain trade secrets, as well as proprietary, commercial, and financial information, are not subject to the state's open record laws. The policy requires institutional policies "allow the free dissemination of data from knowledge creation efforts while maintaining confidential information and preserving the intellectual property rights resulting from such programs." The policy also vests the right to publish the results derived from research and development programs in the institution, its faculty, staff, or students. The committee also reviewed Policy No. 611.2, which enables institutions to develop procedures to manage intellectual property at the institution, does require certain provisions, such as the requirement that at least 30 percent of net royalties received for a patent or copyright be distributed to the original creator.

The committee received information that a University System task force was created in 2010 to review State Board of Higher Education policy relating to intellectual property. The task force recommended the board adopt minor changes to existing policies. The board reviewed the proposed changes to intellectual property policies at a meeting in November 2013. However, the board tabled any action on the proposed changes to allow board members to receive additional input regarding the changes.

The committee's review of intellectual policies and procedures included a review of intellectual property ownership. Under the board policy, a research university retains ownership of all intellectual property created or developed solely by the research university's faculty, staff, and students using university resources. A private sector partner retains ownership of all intellectual property created or developed solely by its employees. When intellectual property is developed or created jointly by a research university and a private sector partner, both the research university and the private sector partner have an equal, undivided ownership interest in the intellectual property. If the intellectual property was created or developed using federal funding, either the research university retains ownership or the ownership transfers to the federal government. This applies even if the intellectual property was developed jointly between a research university and a private sector partner.

The federal Bayh-Dole Act was enacted in 1980 and affects inventions developed at higher education institutions using federal funds. Before the Act, there was minimal licensing and commercialization resulting from federally funded research at institutions because the federal government retained ownership of inventions. The Act allows institutions to retain certain ownership rights of inventions resulting from federal research funding. A research university may assign or transfer its ownership interest to an independent foundation.

The ownership of an invention developed by an institution employee or student varies based on the specific situation. An invention may belong to the institution if the invention was developed as part of the employee's work duties and utilized institution resources.

Board policy requires an institution to make annual payments of at least 30 percent of the net royalties and fees associated with intellectual property to the inventor. The net royalties are the gross royalties and fees reduced by taxes, expenses for procuring and protecting the patent, and any other relevant costs. The 30 percent minimum for the disbursement of royalties applies both to intellectual property developed solely by a research university's faculty, staff, and students and to intellectual property developed jointly between a research university and a private sector partner.

As authorized by Policy No. 611.2, both the University of North Dakota (UND) and North Dakota State University (NDSU) have developed intellectual property policies that address intellectual property issues unique to each respective institution. Institution policy at UND provides that inventors receive a larger percentage of licensing revenue than required by board policy. Licensing revenue for inventions developed at the institution is distributed 45 percent to the inventor, 50 percent to the institution to support more research, and 5 percent to the department or unit where the invention was developed. Licensing revenue from intellectual property developed at UND has increased from $55,000 in 2011 to $148,000 in 2013. The institution has approximately 25 to 30 invention disclosures per year.

The NDSU Research Foundation is a separate nonprofit entity that owns and manages intellectual property developed at NDSU. The foundation coordinates intellectual property protection, marketing, licensing, and enforcement.

After recovery of patenting and licensing expenses, the royalty revenue relating to an invention is distributed 30 percent to the inventor, 40 percent to the departments and units that developed the invention, and 30 percent is retained by the institution and foundation. The NDSU Technology Transfer Office reported 58 inventions in fiscal year 2013. NDSU Research Foundation licensing revenues have ranged from $1.2 million to $2.1 million per year since 2004.

Research Activities

The committee received testimony on the importance of research institutions. The core mission of a research institution is to teach, to provide outreach, and to conduct research. Research-related activities have a significant financial impact to an institution. Two institutions in the state are categorized as research universities by the Carnegie classification system. The University of North Dakota is classified as a high-research activity institution and NDSU is ranked as a very high-research activity institution. Approximately 25 percent of institution revenues at UND and NDSU are from research activities. Institutions conducting federal research projects receive reimbursement for certain overhead costs through a facilities and administration rate. Each institution negotiates a rate with the federal government, and the rate is based on a variety of factors, including research facilities, research faculty, and total research funds. The current facilities and administration rate at UND is 38 percent, and the current rate at NDSU is 45 percent.

Most research faculty spend half their time conducting research and the other half teaching. Some research faculty, such as agriculture research faculty, may spend up to 70 percent of their time on research projects. Research staff who do not provide classroom instruction are generally compensated entirely from income relating to research contracts with outside entities. Institutions use different methods to attract and compensate research graduate students, such as a tuition waiver or stipends. The testimony indicated while the state's research institutions are proactive in developing partnerships with private sector entities, the institutions are aware that not every partnership may be appropriate for the institution.

The committee received testimony that NDSU's research activities include not only the well-established research programs in the areas of agriculture, transportation, and polymer coatings but the university is also working on emerging research opportunities in the fields of unmanned aerial vehicles, informatics, and digital mobile health.

Testimony indicated UND's research activities are in the areas of aerospace, environment, natural resources, energy, life sciences, arts and humanities, and social and behavioral sciences. The testimony cited specific examples of research including the development of biodiesel that does not gel in cold weather, methods to control mercury emissions from coal plants, airborne sense-and-avoid technologies and development of communication systems for unmanned aerial systems, and social changes and challenges in the Bakken.

Commercialization of Intellectual Property

Section 15-10-17(9) allows the State Board of Higher Education to adopt rules promoting research and encouraging the development and commercialization of intellectual property. State Board of Higher Education policy authorizes the owner of the intellectual property to negotiate exclusive or nonexclusive commercially reasonable royalty-bearing licenses for the commercialization of the intellectual property. If the intellectual property was created jointly between a private sector partner and a research university, both parties have the right to negotiate royalty-bearing licenses. A private sector partner may request an exclusive royalty-bearing license with the research university to gain complete control over the intellectual property. A nonexclusive royalty-bearing license usually costs less, but allows other private sector partners to gain access to and utilize the intellectual property. If the intellectual property was created or developed jointly between a private sector partner and a research university using federal funding, the private sector partner has the first option to negotiate a royalty-bearing license with the research university assuming the research university retained ownership of the intellectual property. The terms of royalty-bearing licenses are unique to each agreement.

According to testimony from a representative of UND, to encourage more research and innovation, the institution's policy grants a larger percentage of licensing revenue than is required by State Board of Higher Education policy. Other efforts to encourage the commercialization of intellectual property include membership in national technology management organizations, use of federal resources, relationships with the UND Center for Innovation and the Tech Accelerator facility, a strong relationship with the Grand Forks Economic Development Corporation, and participation in the Research North Dakota program.

The committee received information regarding the Research North Dakota program. The 2013 Legislative Assembly's $12 million appropriation to the Department of Commerce for Research North Dakota program grants was to be used to provide up to $2 million for venture grants to research institutions for pursuing further commercialization of technology developed by the institution or jointly with a startup or spinoff business operating in the state and a total of $10 million to provide grants to research institutions for research, development, and commercialization activities with private sector partners. Of this amount, $4 million is to be used for biotechnology grants to develop and commercialize vaccines and antibodies.

The committee received numerous examples of innovative products as well as startup companies, including an engineering software company, a software company focused on health care, and a biotechnology company.

The committee received a report from the State Board of Higher Education regarding a task force that was formed to review existing State Board of Higher Education policies affecting intellectual property. The task force reviewed options to amend the policies and was expected to provide recommendations for amendments before the end of 2014. It was noted the State Board of Higher Education takes very seriously the responsibility the Legislative Assembly has entrusted to the board for intellectual property management at the various institutions within the University System. It was also noted the task force worked to ensure the policies benefit students, faculty, and staff; foster and facilitate collaborations with the state's valued private sector partners; and that the research and reactive activities of the University System continue to be a source of pride for all North Dakotans.

Conclusion

The committee expressed support for the efforts of the task force to revise the intellectual property policies and to increase collaboration between the two research universities.

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 of Commissioners on Uniform State Laws. 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:

1. **The Uniform Act on Prevention of and Remedies for Human Trafficking.** The Act was initiated as the result of a proposal by the American Bar Association Center for Human Rights in 2010. The Act was approved by the national conference in July 2013 and by the American Bar Association House of Delegates in August 2013. To date in 2014, the Act has been introduced in 12 states and enacted in 2 states.
2. **The Uniform Fiduciary Access to Digital Assets Act**, which was approved by the national conference in 2014. In the modern world, documents are stored in electronic files rather than in file cabinets, e.g., photographs are uploaded to websites rather than printed on paper. Under this Act, if a fiduciary would have access to a tangible asset, that fiduciary will also have access to a similar type of digital asset. The Act governs four common types of fiduciaries: personal representatives of a deceased person's estate; guardians or conservators of a protected person's estate; agents under a power of attorney; and trustees. The Act defers to an accounts holder's privacy choices as expressed in a document, e.g., a will or trust or by an online affirmative act.
3. **The amendment to Uniform Commercial Code Article 4A (4A-108)**, which was approved by the national conference in 2012, was introduced in the 2013 legislative session, but which failed to pass the Senate. The amendment provides that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the federal Electronic Funds Transfer Act. Without this amendment, neither state nor federal law will apply for transfers that may involve mistaken addresses or payees and other issues beyond the initial sending of the transfer. To date, the amendment has been enacted in 41 states, including Minnesota, South Dakota, and Montana.
4. **Amendments to the Uniform Fraudulent Transfer Act**, which were adopted by the national conference in 2014. The conference renamed the Act the Uniform Voidable Transactions Act, which more closely reflects the Act. The amendments address narrowly-defined issues, such as choice of law rules and burden of proof rules for claims under the Act.
5. **The Revised Uniform Limited Liability Company Act**, which was recommended by the national conference in 2006. The revised Act was the subject of a 2009-10 interim Judiciary Committee study, which recommended continued study during the 2011-12 interim while Minnesota was working on the revised Act for adoption in Minnesota. The 2011-12 interim study recommended that the revised Act not be introduced during the 2013 legislative session because Minnesota had not yet adopted the revised Act. In 2014 the Minnesota Legislature adopted the revised Act, which was signed by the Governor in April.

Conclusion

The committee makes no recommendation regarding these uniform Acts.

STATUTORY AND CONSTITUTIONAL REVISION

Driving without Liability Insurance

The committee received testimony in explanation of an Attorney General letter opinion regarding the implementation of 2013 House Bill No. 1263. The letter opinion discussed an ambiguity in whether the charge of driving without liability insurance is to be treated as an infraction under Chapter 12.1-32 of the criminal code or a noncriminal offense under Chapter 39-06.1, and which of these chapter's procedures would more properly be applied to the offense of driving without liability insurance. The Attorney General concluded House Bill No. 1263 amended the statute concerning driving without liability insurance by reducing a violation from a Class B misdemeanor to an infraction, making the offense a noncriminal moving violation traffic offense, and adding enhanced penalties for a second or subsequent offense. For a repeat violation, the opinion indicated the officer either may advise the driver of the penalties, bond, and mandatory impound order, or may take the driver to a magistrate who may then advise the driver of the enhanced charge, bond, and mandatory impound order and release the driver on a promise to appear. The Attorney General recommended those courses of action for law enforcement to use until the matter can be brought to the Legislative Assembly for clarification.

The committee considered a bill draft that would have changed the penalty for driving without liability insurance from an infraction to a $150 fine for a first violation and $300 for a second or subsequent violation within three years. Testimony on the bill draft indicated the bill draft would help to resolve the problem created by House Bill No. 1263, which was an attempt to decriminalize the violation of driving without liability insurance by making the offense an infraction, which is a criminal offense. It was noted neither the bill draft nor House Bill No. 1263 resolves the problem of letting someone drive after being cited for failing to have proof of insurance.

Conclusion

The committee makes no recommendation regarding the driving without liability insurance issue.

Technical Corrections

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.

Recommendation

The committee recommends Senate Bill No. 2053 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change:

Section	Reason
4-21	Chapter 4-21, which provides for payment of a tree bounty of two dollars for every row of 80 rods of trees planted, was declared unconstitutional in 1941 because it attempted to make a disbursement of public funds without an appropriation. A survey of county auditors found no county using this law.
11-11.1-05	This section permitted a county one-mill levy for a job development authority for the year 1985 only.
34-05-01.2	The statutory date of January 1, 1999, which relates to the starting date for the authority of the Governor to appoint a labor commissioner, is no longer necessary as the date has passed.
38-18.1-03(1)	This subdivision, which provides a procedure for the termination of a mineral interest, is obsolete due to the repeal of two other subdivisions in 2009.
54-44.1-18	The statutory date of June 1, 2011, which removes the starting date for the Director of the Office of Management and Budget to develop a searchable database of expenditures, is no longer necessary as the date has passed. This section as created did not contain an expiration date.

REVIEW OF EXECUTIVE ORDERS

Pursuant to Section 54-03-32, the Legislative Management delegated to the committee the responsibility to review any executive order issued by the President of the United States which has not been affirmed by a vote of the Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. The committee monitored and reviewed the executive orders issued between May 2013 and August 2014. The committee concluded there were not any executive orders issued during that period which rose to the level indicated in the directive.

Conclusion

The committee makes no recommendations for further review by the Attorney General and the Governor of any executive order issued between May 2013 and August 2014.

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 State 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. The survey indicated those who had at least one drink in the past 30 days decreased from 38.8 percent in 2011 to 35.3 percent in 2013. For other illicit drugs, marijuana use remained steady at 15 percent and is now lower than the national average by 8 percent. A slight increase, from 16.2 percent in 2011 to 17.6 percent in 2013, was noted in North Dakota high school students who have taken a prescription drug, such as OxyContin, Percocet, Vicodin, Adderall, Ritalin, or Xanax, without a doctor's prescription.

The Attorney General's report noted that almost nonexistent in the state in 2009, the use of synthetic drugs skyrocketed in 2011 and 2012. Synthetic drug submissions to the State Crime Laboratory increased from 311 in 2010 to 1,470 in 2013. In November 2012, in conjunction with the State Board of Pharmacy, the Attorney General's office took emergency action to ban the sales of these often deadly synthetic products in the state. As a result of this combined approach, synthetic drug arrests have fallen and submissions of these synthetics to the State Crime Laboratory decreased 75 percent in 2013.

The report of the Attorney General's Bureau of Criminal Investigation, which compiles data provided by the law enforcement agencies serving the state, indicated drug arrests increased by 286 percent in the past 22 years from 745 in 1990 to 2,872 in 2012. 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 although the pseudoephedrine sale restrictions helped reduce the number of meth labs in the state, most of the meth sold and used in the state has always come from out of state and continues to increase.

In addition to an increase in the Bureau of Criminal Investigation's drug case numbers, the complexity of these cases and the quantity and quality of drugs involved present even greater challenges and a more dangerous environment for agents. The report noted the focus of the bureau's enforcement efforts has transitioned from investigating and arresting local dealers who dealt in grams and ounces to the investigation of dealers distributing many pounds of drug product. The report also indicated the vast majority of drug dealers are now armed and organized with potentially more tendencies toward violence.

Information provided on the use of the criminal justice oil impact funding indicated that all of the $16.6 million in criminal justice oil impact funding had been allocated for various needs, including additional Bureau of Criminal Investigation agents, additional State Crime Laboratory personnel, 80 adequately equipped vehicles, and housing assistance.

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.

For the year beginning September 1, 2012, and ending August 31, 2013, the commission provided counsel on approximately 11,168 case assignments, an increase of 19 percent from two years ago. In McKenzie County, case assignments increased from 89 to 197 in two years, a 121 percent increase. Williams County increased by 54 percent,

and Burleigh County increased by 34 percent in that same time period. Approximately 87 percent of cases are criminal matters, and approximately 13 percent of the case assignments are juvenile matters. The commission also provided legal counsel for about 61 appeals to the North Dakota Supreme Court and 62 postconviction petitions. The commission employs 33 full-time equivalent (FTE) positions and several part-time employees who serve as administrative aides. The seven public defender offices are located in Williston, Dickinson, Bismarck, Grand Forks, Fargo, and Minot. There are two offices in Minot--the main office and an adjunct office with one attorney and one part-time staff. The adjunct office provides assistance with Minot conflict cases and Williams County cases. The commission's administrative office is located in Valley City.

The commission's budget for the 2013-15 biennium is $11,923,410 from the general fund. The commission also has the authority to spend money from a special fund in the amount of $2,497,866. These funds are received from court fees paid by defendants and from the indigent application fee. The commission does not apply for grants nor does it receive any federal funds. The report indicated because caseload continues to grow and that trend is likely to continue, the commission will seek an increase in general fund support for the 2015-17 biennium.

According to the report, the commission continues to look at ways to recruit attorneys. The commission is pursuing ways to increase the number of interns from the UND School of Law in order to generate interest in indigent defense.

NORTH DAKOTA RACING COMMISSION REPORT

The committee received a report from the Director of the North Dakota Racing Commission pursuant to Section 53-06.2-04. The commission is the regulatory body in charge of regulating live and simulcast racing in the state. The 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.

Although account deposit wagering, an online method of wagering on horse racing licensed and regulated by the state, is often associated with the commission, the primary purpose of the commission is to support the horsemen of the state. Over the last four years, the commission has increased, from 1 to 11, the number account deposit wagering companies licensed in the state. In the 2012 fiscal year, the commission's account deposit wagering companies produced $195 million in handle and is on track to reach a projected $250 million in the 2013 fiscal year due in part to a significant increase in international wagering. According to the report, while many account deposit wagering companies initially began operations in North Dakota, the commission has begun to experience account deposit wagering companies licensed in other jurisdictions moving here as well. The commission is taking the following steps to ensure the account deposit wagering companies are held to a high standard of regulatory compliance and transparency in all aspects of their operations:

- The commission has put in place a memorandum of agreement with the Thoroughbred Racing Protective Bureau under which that organization conducts a background check on prospective account deposit wagering companies and their principals before taking any action on an application. No license is issued to an account deposit wagering company whose business practices do not meet the highest industry standards.
- After receiving Racing Commission approval, account deposit wagering applications are reviewed and approved by the Attorney General to ensure full compliance with state and federal laws.
- Account deposit wagering company employees are required to submit to a Federal Bureau of Investigation national background check through the state Bureau of Criminal Investigation before employees may begin employment.
- The commission has contracted with the preeminent pari-mutuel auditing company to provide independent monthly auditing of all account deposit wagering activity.
- Though not mandatory, the commission is working toward adopting the Racing Commissioners International Model Rules in an effort to ensure that North Dakota follows current industry standards in all aspects of racing.

According to the report, the true purpose of the commission is not the proliferation of gambling but rather the welfare of the North Dakota horsemen and their families. The statutory tax structure of the commission requires that all income resulting from account deposit wagering company operations directly or indirectly returns to the horsemen. The .0025 percent tax of the total account deposit wagering handle is split equally into four funds--the general fund, which offsets the commission's funding for the following years; the promotion fund, which is directed to supporting race meets in the state; the purse fund, which provides the vast majority of purse funding for the live races; and the breed fund, which promotes the breeding of horses in North Dakota through performance awards. All breakage--the remaining pennies from pari-mutuel payoffs rounded up to a nickel or dime--from the account deposit wagering companies retained by the commission is deposited directly into the promotion fund. The report noted the positive trend in account deposit wagering company tax contributions should allow the commission to begin remitting taxes

equivalent to the commission's biennial appropriation from the general fund in the near future. In addition to payments to the general fund, over the 2012 and 2013 fiscal years, the commission will have made the following direct contributions to the states equine industry:

Equine Fund	Amount
Promotion	$532,000
Purse	400,500
Breeders	218,000
Total	$1,150,500

Finally, the report indicated both the Fargo and Belcourt race tracks saw record or near-record attendance and handle in 2013. As a result, two additional weekends of racing were held at North Dakota Horse Park Fargo in 2014.

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. The lottery's goal is to provide a service to the citizens of North Dakota and, while considering the sensitive nature of the lottery, promote games and ensure the integrity, security, and fairness of its operation. To accomplish this, 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 2013-15 biennium, the lottery had a fixed appropriation of $1,537,944 for salaries and fringe benefits for 9.5 FTE positions, and $2,595,877 for operating expenses, for a total of $4,133,821. 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. These games have a range of minimum jackpots of $22,000 to $40 million and a range of overall odds of winning a prize of 1:3.59 to 1:31.85.

For the 2013-15 biennium, the lottery projected sales of $47 million and transfers of $12.25 million ($11 million - state general fund; $400,000 - compulsive gambling prevention and treatment fund; and $845,000 - Multijurisdictional Drug Task Force grant fund). Unaudited ticket sales through March 2014, the first nine months of the fiscal year, were $20,840,158. This amount reflected a $631,000 increase in sales or 3 percent increase compared to the same period in 2013. The lottery is on track to meet projected sales of $26,800,000 and transfers of $6,164,000 for the first year of the biennium.

During the 2013-15 biennium, the lottery has done or has plans to update lottery equipment at retailer locations; including new terminals, self-service ticket checkers, jackpot signs, and LCD monitors; implement an automated subscription process and players club that will provide an easy way for players to manage their subscriptions and reward players for their continued patronage; implement 50 self-service lottery terminals to the retailer base allowing players to purchase and check lottery products without utilizing a retailer clerk; celebrate the lottery's 10th anniversary; conduct rebranding campaign to bring an exciting and refreshing look to the lottery; relaunch Mega Millions with changes that will provide better odds, more winners, and larger jackpots; return the random Power Play multiplier to Powerball; add a new online game that will complement the product mix; develop and conduct innovative marketing promotions and public awareness campaigns; redesign the website to make it more innovative and user-friendly; and enhance security features to ensure the integrity and fairness of its operation.

The new contract with Scientific Games International, Inc., provides the lottery with online and secondary online gaming systems hardware, games management system software, retailer telecommunications network, 450 lottery terminals, self-service ticket checkers, jackpot signs, lottery in-motion monitors, customer display units, 50 self-service lottery terminals, primary and secondary internal control systems, and four field technicians and one field service supervisor to provide service to lottery retailers. The lottery's primary data center will be moved from Oklahoma City, Oklahoma, to the Scientific Games International national data center in Alpharetta, Georgia. In addition, Scientific Games International will provide a testing facility in Bismarck.

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 process for the evaluation of a sexually dangerous individual is initiated by the local state's attorney. If it appears that an individual is a sexually dangerous individual, the state's attorney may file a petition in state district court alleging that the individual is a sexually dangerous individual. If the court determines, after a preliminary hearing, that there is probable cause to believe the individual is a sexually dangerous individual, the court order that the individual be transferred to an appropriate treatment facility for an evaluation as to whether the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder that makes the individual likely to engage in further acts of sexually predatory conduct. If, after a commitment hearing, the individual is found to be a sexually dangerous individual, the court commits the individual to the care, custody, and control of the Executive Director of the Department of Human Services. Annually the committed individual is provided written notice of the individual's right to petition the court for discharge.

The evaluation and treatment program for sexually dangerous individuals has operated at the State Hospital since 1997. The State Hospital operates 76 inpatient beds for this purpose. The State Hospital also operates a transitional home for patients that are in the late stages of treatment and are scheduled for discharge from the program. The sex offender evaluation and treatment program at the State Hospital is designed as a psychiatric rehabilitation program with special programming for residents with sex offense histories. The program includes a multidisciplinary team that uses both cognitive behavioral and rehabilitation approaches in providing group and individual therapy with an emphasis on assessment, skills building, a vocational process, and group psychotherapy. The intent of the program is to provide treatment opportunities for sex offenders within a safe, secure, and humane environment that protects residents, staff, and the public. The annual cost per patient in the program is $91,206. There are 87.7 FTE positions assigned to the program, including treatment, direct care, and security personnel. From 1997 through 2014, 152 evaluations have been completed; 61 individuals were discharged after evaluation; 91 sexually dangerous individuals have been committed; 26 sexually dangerous individuals have been discharged from the program; three sexually dangerous individuals have returned to prison; and one sexually dangerous individual has returned to the State Hospital. In addition, as of May 6, 2014, 59 sexually dangerous individuals were in inpatient status, two were in the evaluation stage, and seven were residing in county jail or prison.

GOVERNOR'S REPORT ON STATUS OF GENDER BALANCE

The committee received a report on the status of gender balance on appointive boards, commissions, committees, and councils and within the Governor's appointive cabinet for the 2013-15 biennium. North Dakota has 145 boards, commissions, committees, and councils to which the Governor makes appointments. The Governor is responsible for more than 1,000 individual appointments. All appointments made by the Governor are first and foremost to the best-qualified candidates. Section 54-06-19 requires that gender balance be considered to the extent possible and to the extent that appointees are qualified to serve on those entities. Geographical location and diversity are also considered. As of April 24, 2014, the gender balance on all boards and commissions to which the Governor makes appointments was approximately 60 percent men and 40 percent women. The report included examples of gender balance on boards versus the balance of those employed within the related professions.

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 (NDCC) 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 NDCC 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 Gary Kreidt (Chairman), Wesley R. Belter, Jeff Delzer, Ron Guggisberg, Patrick Hatlestad, Jerry Kelsh, Scot Kelsh, Keith Kempenich, Andrew G. Maragos, Bob Martinson, Corey Mock, Chet Pollert, Dan Ruby, Jim Schmidt, Robert J. Skarphol, and Wayne Trottier and Senators Ralph Kilzer, Judy Lee, David O'Connell, Terry M. Wanzek.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

During the 2013-14 interim, the State Auditor's office and independent accounting firms presented two performance audit and evaluation reports and 113 financial or information technology application audit reports. During the 2013 regular legislative session, the committee received two additional performance audit and evaluation reports. An additional 41 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 2013-14 interim:

1. Receive the annual audit report for the State Fair Association (NDCC 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 (NDCC Sections 10-19.1-152, 10-32-156, and 45-10.2-115).
3. Receive annual reports on the write-offs of accounts receivable at the Department of Human Services and Life Skills and Transition Center (NDCC 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. (NDCC 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 electronic copy of audit report from the North Dakota Stockmen's Association at least one every two years (NDCC Section 4.1-72-08. NDCC Section 36-22-09 provides for the audit report to be submitted to the Legislative Council).
6. Receive the performance audit report of Job Service North Dakota upon the request of the committee (NDCC Section 52-02-18).
7. Determine necessary performance audits (NDCC 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 (NDCC Section 54-10-01).
9. Determine the frequency of audits or reviews of state agencies (NDCC Section 54-10-01(2)).

10. Determine when the State Auditor is to perform audits of political subdivisions (NDCC Section 54-10-13).
11. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (NDCC Section 54-10-15).
12. Study and review audit reports submitted by the State Auditor (NDCC 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

North Dakota Century Code 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, 2013 and 2012. The firm presented its audit report at the committee's January 21, 2014, meeting. The audit report contained an unqualified opinion and one finding on recording of transactions and two significant audit adjustments to reduce work in progress and accounts receivable balances in both the general and operating funds.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

North Dakota Century Code 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 unmodified opinion was issued on the financial statements. The committee received and accepted the state's June 30, 2012, and June 30, 2013, CAFRs.

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, 2012. An unqualified opinion was issued on the financial statements. As of June 30, 2012, the University System had total assets of $1,400 million and total liabilities of $435.9 million, resulting in total net assets of $963.7 million. The total net assets increased $61.6 million during fiscal year 2012. The annual degree credit headcount enrollment for the fall 2011 semester was 48,805, a 2 percent increase over the fall 2010 enrollment.

The committee received the University System's annual financial report for the fiscal year ended June 30, 2013. An unqualified opinion was issued on the financial statements. As of June 30, 2013, the University System had total assets of $1,470 million and total liabilities of $428 million, resulting in total net assets of $1,042 million. The total net assets increased $70.6 million during fiscal year 2013. The annual degree credit headcount enrollment for the fall 2012 semester was 48,203, a 1 percent decrease over the fall 2011 enrollment.

PERFORMANCE AUDITS AND EVALUATIONS

North Dakota University System Office

During the 63rd Legislative Assembly, the Legislative Audit and Fiscal Review Committee received and accepted the performance audit report of the University System office conducted by the State Auditor's office. The committee consisted of members of the Legislative Assembly who served on the committee during the 2011-12 interim. The objective of the audit was to determine if the University System office is adequately staffed to perform its functions.

The performance audit included 15 recommendations. The recommendations provide that the University System office:

1. Ensure the necessary resources are obtained to adequately perform the functions and duties of the office.
2. Ensure a system-wide monitoring function is established for the university system.
3. Ensure there is a unified system of higher education. If a unified system is unattainable, ensure appropriate action is taken to remove unified system language in laws and make appropriate changes to higher education's organizational structure and operations.
4. Develop a plan to establish the expectations of the office and use the plan to guide resource allocation.
5. Improve the university system's strategic planning and measuring performance processes.
6. Comply with State Board of Higher Education Policy 703.1 and ensure early retirement agreements only include payments authorized by policy.
7. Make improvements related to the assessment of campuses for paying the costs of employees. At a minimum, the University System office should:
   a. Obtain proper State Board of Higher Education approval prior to assessing campuses;
   b. Ensure assessments are properly budgeted and accounted for at the University System office and campus level; and
   c. Ensure moneys assessed are used for the purpose for which the assessment was charged.
8. Take appropriate action to have internal audit functions within the University System report to the appropriate University System office personnel rather than to an institution president.
9. Establish an internal audit charter consistent with the definition of internal audit, the Code of Ethics, and other applicable standards.
10. Ensure State Board of Higher Education policies and University System procedures are concise, up to date, accurate, and user-friendly.
11. Ensure a formal written policy and/or procedure is established regarding the process to be used for drafting, reviewing, and approval of new or amended North Dakota University System procedures.
12. Comply with North Dakota Administrative Code (NDAC) Chapter 42-02-02 requirements related to the Indian Scholarship program.
13. Review NDAC Title 42 related to the Indian Scholarship program and take appropriate action to make changes.
14. Ensure information provided is consistently and accurately reported.
15. Ensure compliance with NDCC Chapter 54-46 and maintain an appropriate records management program.

Water Appropriations Division

During the 63rd Legislative Assembly, the Legislative Audit and Fiscal Review Committee received and accepted the performance audit report for the Water Appropriations Division of the office of the State Engineer. The committee consisted of members of the Legislative Assembly who served on the committee during the 2011-12 interim. The State Auditor contracted with KPMG, LLP, Certified Public Accountants to perform an assessment of the industrial water use monitoring and reporting policies and procedures used by the Water Appropriations Division. The audit period for which information was reviewed was January 2010 through June 2012.

The Water Appropriations Division is a component of the office of the State Engineer with designated responsibilities including administering and processing water rights, adjudicating and evaluating water rights, monitoring water resources, disseminating water resource information, developing community water supplies, conducting water resource research, and identifying and evaluating potential water supplies for economic development.

The performance audit included 17 recommendations. Major recommendations include that the Water Appropriations Division:

1. Ensure adequate documentation of monitoring and reporting processes by developing standard policies.
2. Ensure Annual Use Form (AUF) submissions comply with laws, rules, policies, and implement an online reporting tool.
3. Implement remote terminal metering devices and develop policies and guidelines for field inspection activities to reduce reliance on self-reporting by the permit holder.
4. Develop and implement an online reporting tool to reduce manual reporting processes.
5. Ensure enforcement of permit use reporting policies, and provide customer outreach to educate permit holders on reporting practices to prevent permit holders from reporting use allocation data for multiple permits on a single AUF.
6. Develop policies for document management activities and consider technology and database enhancements to reduce inconsistency within the document management system and across file types.
7. Consider the quantity and quality of use report information and enforce policies on information requirements, provide customer outreach to educate permit holders, and consider technology enhancements, including an online reporting tool.
8. Consider the use of electronic recording devices to reduce manual processes.
9. Ensure compliance with policies on industrial water use and well monitoring processes to assess compliance with laws, rules, regulations, policies, and procedures, including permit conditions.
10. Ensure compliance with monitoring policies and procedures for managing temporary industrial water use permits issued in lieu of irrigation to assess compliance with laws, rules, regulations, policies, and procedures.
11. Define and document criteria used to determine use reporting requirements to reduce inconsistency in the application of reporting conditions placed on temporary permits.
12. Enforce policies on reporting deadlines, and provide customer outreach to educate permit holders as a result of variations in the consistency of use data and timeliness of reporting.
13. Develop policies and guidelines for field inspection activities to reduce inconsistency with field inspection practices.
14. Ensure compliance with monitoring policies and procedures utilized to manage temporary industrial water use permits issued for surface water resources to assess compliance with laws, rules, regulations, policies, and procedures.
15. Develop violation enforcement policies and procedures on identification, imposition and collection of penalties. In addition, reallocate violation responsibilities to the Hydrologist responsible for the area in which the violation occurred.
16. Provided information on penalties assessed from 2010 through 2012.
17. Consider more use of technology, and standardize and document procedures on identification of use violations.

The committee learned the performance audit determined the Water Appropriations Division executes reporting and monitoring practices to adhere to laws, regulations, and policies. However, the practices are not formally documented and are primarily manual in nature, which may result in inconsistent application of policies and procedures.

The State Auditor's office requested and the committee approved additional funding to expand the performance audit of the State Water Commission's regulation of industrial water use in the state to include the water permitting process and to authorize an additional $50,000 to be spent for hiring a consultant to assist with the audit.

Water Appropriations Division - Phase 2

During the 2013-14 interim, the committee received Phase 2 of the performance audit report for the Water Appropriations Division of the office of the State Engineer. The State Auditor contracted with KPMG, LLP, Certified Public Accountants to perform an assessment of the industrial water use permitting process used by the Water Appropriations Division. The audit period for which information was reviewed was January 2010 through June 2012.

The water permitting process is a complex, science-based process, and many of the state's groundwater aquifers are at advanced stages of development. The decision on pending water permit applications from aquifers can take 10 to 15 years of monitoring the aquifer's water-level response to pumping, water use monitoring, and climate data monitoring.

The performance audit included compliance operational efficiency findings and recommendations. The compliance findings and major recommendations include:

1. Conditional permit application process.
    a. Ensure compliance with all applicable laws, regulations, and policies.
    b. Consider implementing database system notifications.
2. Temporary permit application process.
    a. Ensure compliance with all applicable laws, regulations, and policies.
    b. Document policies and procedures on the temporary permit application process.
3. Formal inspection protocols.
    a. Conduct inspections to ensure compliance pursuant to NDCC Sections 61-04-09 and 61-04-14.
    b. Assess whether current resource levels are sufficient for operational requirements.
    c. Develop a notification tool within the database to assist with conditional permits expiring.

The operational efficiency findings and major recommendations include:

1. Fee structure for conditional permits has remained constant since 1991.
    a. Explore alternative fee structures including annual permit fee, annual use fee, inspection fee, and alternative fee tiers.
    b. Consider alternative variables on which to base the fee structure.
    c. Conduct a workload analysis of the permit application process to determine costs.
    d. Request an amendment to NDCC Section 61-04-04 regarding a potential fee change.
2. No fee is required for temporary permit applications.
    a. Assess time, resource, and cost impact of temporary permit applications on the conditional permit application population.
    b. Develop a fee structure for temporary permit applications.
3. Application process is manual.
    a. Develop and implement an online application intake tool.
4. No formal policies and procedures for processing temporary applications.
    a. Develop formal policies and procedures to reflect current practices for processing temporary permit applications.
5. Lack of formal communication management protocols.

a. Develop an online status reporting tool.

b. Update the current application instructions on the permitting process.

c. Provide information on water sources and associated processing time and permit availability.

d. Develop and publish information on temporary application process and permit requirements.

e. Establish formal communication procedures for interacting with applicants.

6. Inconsistencies within the document management system.

   a. Develop policies and procedures for uploading files to include scanning at defined intervals in the process.

   b. Define a structure to govern the electronic storage of records in the database.

7. Bifurcated conditional permit application process.

   a. Assess the allocation of responsibilities on the efficiency of the permitting process.

   b. Determine if the resource capacity exists to perform process components within the Water Appropriations Division.

   c. Establish a dedicated mailbox for permit application documentation.

The committee learned the audit included a review of five states with similar water rights and laws. In addition, the committee learned the agency is in the process of drafting administrative rules to establish permitting fees and the committee reviewed the current fee structure.

The committee accepted the performance audit of the Water Appropriations Division of the State Engineer's office.

Game and Fish Department Performance Audit

The committee received the performance audit report of the Game and Fish Department. The performance audit was conducted by the State Auditor's office pursuant to authority within NDCC Chapter 54-10. The objective of the audit was to provide an assessment of the private land open to sportsman (PLOTS) program to determine if it is operating effectively and to conduct an assessment of the Game and Fish Department to determine if it is in compliance with laws, rules, and policies related to human resources and the use of resources. The audit period for which information was reviewed was July 2010 through April 2013.

A five member Game and Fish Board of Control was established in 1909 to provide enforcement of game laws in North Dakota. In 1930 voters approved a measure for the Commissioner of Game and Fish to take over the duties of the board. This created the Game and Fish Department which was a continuation of efforts to preserve fish and game species in the state. Since then, various changes to laws have occurred clarifying the department's responsibilities related to fish and game. The mission of the department is "to protect, conserve and enhance fish and wildlife populations and their habitat for sustained public consumptive and nonconsumptive use." The Director of the department is appointed by the Governor. The department's budget for the 2011-13 biennium was approximately $65.5 million with 157 full-time equivalent (FTE) positions authorized. The budget included a $300,000 general fund appropriation to be provided to the Agriculture Commissioner for the State Board of Animal Health and the Wildlife Services program. Other than this general fund appropriation, license and other fee income, federal funds, and other sources, provide funding for the department.

The department has the authority to establish private land habitat and access improvement programs. The department administers the private land program which is the largest program within the department. Two major components of the program include PLOTS and the depredation assistance program. The PLOTS program provides financial and technical assistance to private landowners for habitat protection, enhancement, and development. Administration of the program includes entering into rental agreements with landowners to allow public access for hunting. Payments provided to landowners, the payment type, and the length of the agreements differs as a result of different types of agreements and uses for the land.

The committee learned major findings of the performance audit include:

- The department's PLOTS program goal of one million acres is not a reasonable goal for the program. The goal was originally established in 2003, and since, there have been significant changes affecting PLOTS and no changes have been made to the original goal.
- The department was in noncompliance with procurement requirements.
- The department had not established appropriate agreements for services being received.

- The department had not properly inventoried and was unaware of the location of a number of guns used in its volunteer hunter education program.

The performance audit includes 44 recommendations in five areas including the private land program, procurement and contracting, use of funds, human resource-related issues, and other areas.

Fourteen recommendations relate to the private land program, which provide that the Game and Fish Department:

1. Obtain input from stakeholders of PLOTS to identify expectations of the program and use this information to establish an appropriate goal to measure the effectiveness of the program.
2. Establish adequate policies and procedures to improve the operations and effectiveness of PLOTS.
3. Comply with policies and procedures regarding PLOTS.
4. Ensure compliance with terms and conditions included in PLOTS agreements.
5. Ensure the operations of the PLOTS program are adequately monitored.
6. Ensure PLOTS agreements are signed by both parties prior to the agreement's effective date.
7. Make improvements regarding district priority incentive areas.
8. Make improvements regarding ownership of land included in PLOTS agreements.
9. Ensure adequate information is readily available to hunters regarding PLOTS.
10. Ensure the information made available to landowners regarding PLOTS is up-to-date and user-friendly.
11. Establish adequate policies and procedures to improve the operations and effectiveness of the depredation assistance program.
12. Comply with policies and procedures regarding the depredation assistance program.
13. Establish a monitoring process for the depredation assistance program.
14. Meet with the Risk Management Division of the Office of Management and Budget (OMB) to address the risks associated with providing state-owned property to private individuals as part of the depredation assistance program.

Five recommendations relate to procurement and contracting which provide that the Game and Fish Department:

1. Comply with procurement laws, rules, and policies.
2. Meet with representatives of the State Procurement Office to:
   a. Receive guidance on determining the required procurement process to use for goods being purchased for apparent public improvement purposes.
   b. Review various relationships and agreements, including memorandums of understanding and cooperative agreements, to determine the appropriate procurement requirements.
3. Comply with requirements of the P-Card Manual and ensure only the authorized person is allowed to use the P-Card.
4. Make improvements with contracts and agreements entered for services.
5. Make improvements with contract administration.

Eight recommendations relate to the use of funds which provide that the Game and Fish Department:

1. Ensure an appropriate grant program is established when the department is to provide public funds for sponsorships and similar payments.
2. Ensure payments to employees comply with applicable laws, rules, and policies.
3. Obtain legal advice to determine whether a game warden's district constitutes normal place of employment pursuant to NDCC Section 44-08-04 and establish in policy when game wardens are considered to be in travel status.
4. Document the working arrangements for temporary and seasonal employees upfront.
5. Comply with OMB Policy 217 regarding when employees are permitted to participate in meals provided by the department.

6. Acquire and maintain adequate supporting documentation for expenditures.
7. Make improvements with the use of public funds.
8. Ensure employees who are responsible for approving payments for travel expenses or other expenditures of public funds comply with NDCC Section 44-08-05.1 and determine before approving the payments that the expenditures were for lawful and official purposes, actually due to the individuals, and that the payments contain no false claims.

Seven recommendations relate to human resources, which provide that the Game and Fish Department:

1. Comply with NDAC requirements regarding annual and sick leave and ensure temporary employees are not granted such leave.
2. Ensure a consistent and reasonable screening process is used to evaluate job applicants.
3. Ensure compliance with records management requirements and ensure applicable documentation regarding the hiring process is maintained for the required time period.
4. Comply with NDCC Chapter 37-19.1, relating to veterans' preference requirements in the hiring process.
5. Ensure compliance with Session Laws requirements regarding salary increases.
6. Comply with NDAC Section 4-07-05-03 and ensure individuals employed, promoted, reinstated, or transferred meet at least the minimum qualifications of the job class.
7. Make improvements to the department's performance evaluation process.

Ten recommendations relate to other areas, which provide that the Game and Fish Department:

1. Adequately safeguard sensitive information obtained and maintained by the department.
2. Establish formal policies and procedures regarding the volunteer education instructor program.
3. Establish formal policies and procedures regarding guns used for hunter education.
4. Periodically check the state's sex offender registry for all volunteer instructors.
5. Ensure only allowable costs are charged to federal grant programs.
6. Establish formal requirements to promote and increase the safety of employees operating off-highway vehicles, snowmobiles, and watercraft.
7. Establish policies and procedures regarding promotional items.
8. Make improvements with the policies and procedures regarding clothing provided to employees.
9. Make improvements with inventory processes.
10. Make improvements to policies and procedures regarding confiscated and seized items.

The committee accepted the performance audit of the Game and Fish Department.

Game and Fish Department Update

Later in the interim, the committee received an update from the Game and Fish Department on the status of implementing the performance audit recommendations. The committee learned 80 percent of the 44 recommendations had been implemented when the audit was presented in July 2014. Since then, the following additional recommendations were implemented:

- Working with the OMB to provide training sessions for all supervisors on fiscal management, procurement, human resource management, and risk management.
- Developing a database that will help manage the status and compliance of all department contracts.
- Establishing procedures for all supervisors to use when approving employee reimbursements.
- Collecting all the remaining guns on the inventory list and creating a sign-out sheet that will be used to disburse guns for the hunters' safety education program.
- Providing background checks on over 900 aquatic and hunters' safety education volunteers including criminal history and Game and Fish Department violations. In addition, a list of the department's volunteers was compared to the Attorney General's sex offender registry and the comparison provided no matches.

- Completing a review of all reimbursable vouchers submitted by employees relating to in-state and out-of-state travel.
- Implementing a sponsorship application and reporting form to help ensure public funds for sponsorships and similar payments are provided only for appropriate grant programs.
- Suspending its policy providing uniforms to employees after the State Auditor's office determined certain clothing items provided by the department did not constitute a uniform. The suspension did not include its law enforcement-related employees.

Future Performance Audits

The committee discussed future performance audits by the State Auditor. The committee learned the State Auditor had not begun the performance audit on the use of tuition waivers and student stipends at the University System institutions as requested by the committee in March 2012. The committee directed the State Auditor to conduct the performance audit of the use of tuition waivers and student stipends at University institutions. In addition, the committee requested the State Auditor to conduct a performance audit of the Department of Trust Lands' operations and financial-related activities.

INFORMATION TECHNOLOGY AUDITS

North Dakota Network and Security Audit

The committee received the North Dakota network and security audit report. The State Auditor contracted with ManTech Security and Mission Assurance to conduct the audit. 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 3 high-risk, 7 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 27 unique vulnerability findings, including 24 high-risk and 3 medium-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 application vulnerability assessment identified one medium-risk vulnerability finding with the NDGOV State Portal, and two medium-risk vulnerability findings with the criminal justice information sharing (CJIS) application.

During the security assessment of nonconsolidated information technology services, the physical security measures varied greatly between the agencies depending on the specific mission of the agency assessed. The physical security of the agencies is considered to be adequate to very good.

During the penetration test, the test team was able to access either user- or system-level access during five of nine executed scenarios. The test team did not succeed in achieving system access on the remaining four scenarios.

The network and security audit resulted in the following general recommendations:

- Continue to mature a structured 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 systems and application security patches are deployed in a timely manner. Additional priority should be placed on the timelines for deploying patches to systems and applications that are publicly accessible from the Internet.
- 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 sub-net strictly controlled by access lists. Development servers should also be completely isolated on a separate sub-net 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 and utilize only secure protocols and where possible implement Internet Protocol (IP)-based access restrictions.

- 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.
- Develop a formal vulnerability scanning program - Nonconsolidated services - Agencies with nonconsolidated information technology services should institute regular vulnerability scanning of all systems on a quarterly or bimonthly basis to ensure compliance with system patching requirements. Systems with vulnerabilities should be documented and evaluated, and a determination made as to the validity of the vulnerability. Corrective action should be required and implemented. Scans should be run with administrative privileges to ensure all vulnerabilities with locally installed software can be discovered and documented.

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 accepted the North Dakota network and security audit report.

Judicial Branch Odyssey Case Management Information System Audit

The committee received the judicial branch's Odyssey Case Management Information System audit report. The audit was conducted by the State Auditor. The audit objective was to determine if:

- Security is designed to provide access based on a demonstrated need to view, add, change, or delete data.
- Data is consistent, valid, and complete.
- The accounts receivable process is properly managed.

The committee learned the Odyssey Case Management System's security is designed to provide access based on a demonstrated need to view, add, change, or delete data. The committee learned system data appears to be consistent, valid, and complete. The committee learned, with the exception of the audit recommendations, the accounts receivable process is properly managed. The audit includes three recommendations including the allowance for uncollectible accounts being incorrectly calculated, unauthorized write-offs, and a lack of reconciliation procedures.

The committee accepted the judicial branch's Odyssey Case Management Information System audit report.

ConnectND Human Capital Management Information System Audit

The committee received the ConnectND Human Capital Management Information System audit report. The audit was conducted by the State Auditor. The audit objective was to determine if:

- The pay classification system is enforced and managed by ConnectND Human Capital Management.
- Payroll withholdings and deductions are handled timely and accurately.
- Leave balances are maintained correctly by the system.
- Security roles are designed to provide access based on a demonstrated need to view, add, change, or delete data.

The committee learned the ConnectND Human Capital Management pay classification system is properly enforced and managed. The committee learned the payroll withholdings and deductions are handled timely and accurately. The committee learned the leave balances are properly maintained by the system, and with the exception of the audit recommendation, the security is designed to provide access based on a demonstrated need to view, add, change, or delete data. The audit included one recommendation regarding an individual given unnecessary access.

The committee accepted the North Dakota network and security audit report.

OTHER REPORTS

Department of Human Services Accounts Receivable Write-offs

Pursuant to NDCC 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 write-offs at the State Hospital, Life Skills and Transition Center, and human service centers as of June 30 of each fiscal year. The department's report for fiscal year 2013 was received and accepted by the committee. Accounts receivable write-offs as of June 30, 2013, were $5,843,330 at the State Hospital, $26,343 at the Life Skills and Transition Center, and $1,003,516 at the human service centers.

University System Improvements to Financial Reporting

The committee received a report from a representative of the University System regarding its progress toward addressing previous audit findings and recommendations from the University System's annual financial report. The committee learned actions to address the audit findings and recommendations included additional training for controllers and internal control functions, additional meetings with the State Auditor's office, standardizing processes across universities, creating a formal mentoring program, updating accounting manuals, transferring each university's internal audit functions to the University System office, and adding a University System Chief Compliance Officer position and a new Chief Auditor.

The committee learned the University System office will also be appointing an interdisciplinary team to develop a multiyear internal control and risk assessment implementation plan, identifying additional staff needs across the campuses and in the University System office, implementing an electronic workflow to review and modify processes for internal control and risk assessment, enforcing a policy requiring 40 hours of continuing professional education annually for all auditors, appropriately budgeting for training, and creating five-year peer reviews of internal audits by external certified public accountants.

Bank of North Dakota Financial Reporting Standards

The committee received a report from a representative of the Bank of North Dakota regarding two separate accounting standards that the Bank of North Dakota uses to report operating results. The committee learned rating services, regulators, and other banks rely on the financial statements prepared using Financial Accounting Standards Board (FASB) standards while the state's CAFR is prepared using Governmental Accounting Standards Board (GASB) standards. The committee learned significant differences in reported earnings would result in the future for financial reporting under FASB compared to financial reporting under GASB. The key difference is that under FASB gains or losses in investments are reported only on the balance sheet as an adjustment to equity, while under GASB the same gains or losses are reported on the income statement. As a result, in a time of rising interest rates, the Bank's income reported in accordance with GASB could be substantially less than the Bank's income reported in accordance with FASB.

State Auditor's Office Peer Review

The committee received a report on the peer review of the State Auditor's office performed by the National State Auditors Association for the period March 1, 2013, through March 31, 2014. Auditing standards require a peer review every three years. Audit organizations can receive a rating of pass, pass with deficiency, or fail. The committee learned the State Auditor's office received a peer review rating of pass.

Electronic Viewing of Audit Reports

The committee received a report from a representative of the State Auditor's office on the potential for electronic viewing of audit reports provided to the committee. The committee supported a presentation at its July 2014 meeting using only an electronic viewing format to determine if future audits could be provided using electronic viewing. The Chairman will work with the Legislative Council staff and the State Auditor's office to determine which agency reports will be provided using an electronic viewing format for future meetings.

OTHER INFORMATION

The committee received other information and reports, including information and reports relating to:

- Water Permitting Process in North Dakota and Texas.
- Tobacco Prevention and Control Executive Committee Measure No. 3 funding compliance report.
- Examination report of the Bank of North Dakota from the Department of Financial Institutions.

AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2013-14 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Abstracters' Board of Examiners	August 31, 2012 and 2011	July 16, 2014
Accountancy, State Board of	June 30, 2013	July 16, 2014
Accountancy, State Board of	June 30, 2012 and 2011	July 29, 2013
Addiction Counseling Examiners, Board of	June 30, 2013 and 2012	October 2, 2014
Adjutant General	June 30, 2012 and 2011	July 29, 2013
Administrative Hearings, Office of	June 30, 2013 and 2012	July 16, 2014
Aeronautics Commission, North Dakota	June 30, 2013 and 2012	October 2, 2014
Ag PACE fund	June 30, 2013 and 2012	January 21, 2014
Agriculture, Department of	June 30, 2013 and 2012	October 2, 2014
Architecture and Landscape Architecture, State Board of	June 30, 2013 and 2012	July 16, 2014
Attorney General	June 30, 2012 and 2011	July 29, 2013
Bank of North Dakota	December 31, 2013 and 2012	July 16, 2014
Bank of North Dakota	December 31, 2012 and 2011	July 29, 2013
Barley Council, North Dakota	June 30, 2012 and 2011	January 21, 2014
Beef Commission, North Dakota	June 30, 2012 and 2011	January 21, 2014
Beginning farmer revolving loan fund	December 31, 2013 and 2012	July 16, 2014
Beginning farmer revolving loan fund	December 31, 2012 and 2011	July 29, 2013
Bismarck State College	June 30, 2013 and 2012	October 2, 2014
Building Authority, State	June 30, 2013 and 2012	January 21, 2014
Career and Technical Education, Department of	June 30, 2013 and 2012	July 16, 2014
Chiropractic Examiners, State Board of	December 31, 2013	July 16, 2014
College SAVE	December 31, 2013 and 2012	July 16, 2014
College SAVE	December 31, 2012 and 2011	July 29, 2013
Commerce, Department of	June 30, 2013 and 2012	October 2, 2014
Commission on Legal Counsel for Indigents	June 30, 2013 and 2012	July 16, 2014
Community water facility loan fund	December 31, 2013 and 2012	July 16, 2014
Community water facility loan fund	December 31, 2012 and 2011	July 29, 2013
ConnectND Human Capital Management Information System Audit	June 30, 2013	October 2, 2014
Corn Utilization Council, North Dakota	June 30, 2012 and 2011	July 29, 2013
Corrections and Rehabilitation, Department of	June 30, 2013 and 2012	October 2, 2014
Cosmetology, State Board of	June 30, 2012	July 29, 2013
Cosmetology, State Board of	June 30, 2013	October 2, 2014
Council on the Arts, North Dakota	June 30, 2013 and 2012	October 2, 2014
Counselor Examiners, Board of	June 30, 2012 and 2011	July 29, 2013
Dairy Promotion Commission, North Dakota	June 30, 2012 and 2011	July 29, 2013
Dakota College at Bottineau	June 30, 2013 and 2012	October 2, 2014
Dickinson State University	June 30, 2013 and 2012	July 16, 2014
Dietetic Practice, Board of	September 30, 2013 and 2012	July 16, 2014
Dry Bean Council, North Dakota	June 30, 2012 and 2011	July 29, 2013
Dry Pea and Lentil Council, North Dakota	June 30, 2012 and 2011	July 29, 2013
Education Standards and Practices Board	June 30, 2011	January 21, 2014
Ethanol Council, North Dakota	June 30, 2012 and 2011	July 29, 2013
Examiners for Nursing Home Administrators, State Board of	June 30, 2012 and 2011	July 29, 2013
Examiners on Audiology and Speech-Language Pathology, Board of	June 30, 2012 and 2011	July 29, 2013
Financial Institutions, Department of	June 30, 2012 and 2011	July 29, 2013
Firefighter's Association, North Dakota	December 31, 2011 and 2010	July 29, 2013
Firefighter's Association, North Dakota	December 31, 2012 and 2011	October 2, 2014
Game and Fish Department	June 30, 2012 and 2011	July 29, 2013
Game and Fish Department performance audit	April 9, 2014	July 16, 2014
Governor's office	June 30, 2013 and 2012	July 16, 2014
Guaranteed student loan program, North Dakota	September 30, 2012 and 2011	July 29, 2013
Guaranteed student loan program, North Dakota	September 30, 2013 and 2012	July 16, 2014
Health, State Department of	June 30, 2013 and 2012	October 2, 2014
Highway Patrol	June 30, 2012 and 2011	July 29, 2013
Historical Society, State	June 30, 2012 and 2011	January 21, 2014
Housing Finance Agency	June 30, 2013 and 2012	January 21, 2014
Housing Finance Agency	June 30, 2012 and 2011	July 29, 2013
Housing incentive fund	June 30, 2013 and 2012	January 21, 2014
Housing incentive fund	June 30, 2012	July 29, 2013
Human Services, Department of	June 30, 2013 and 2012	July 16, 2014
Indian Affairs Commission	June 30, 2012 and 2011	July 29, 2013

Industrial Commission	June 30, 2013 and 2012	October 2, 2014
Information Technology Department	June 30, 2012 and 2011	July 29, 2013
Information Technology security audit vulnerability assessment and penetration testing	March 14, 2014	July 16, 2014
Insurance Commissioner	June 30, 2013 and 2012	October 2, 2014
Job Service North Dakota	June 30, 2013 and 2012	January 21, 2014
Job Service North Dakota	June 30, 2012 and 2011	July 29, 2013
Judicial branch	June 30, 2013 and 2012	July 16, 2014
Judicial branch Odyssey Management Information System Audit	March 21, 2014	October 2, 2014
Labor and Human Rights, Department of	June 30, 2013 and 2012	October 2, 2014
Lake Region State College	June 30, 2013 and 2012	October 2, 2014
Law Examiners, State Board of	June 30, 2013 and 2012	July 16, 2014
Legislative Assembly	June 30, 2013 and 2012	January 21, 2014
Legislative Council	June 30, 2013 and 2012	January 21, 2014
Lottery, North Dakota	June 30, 2013 and 2012	July 16, 2014
Lottery, North Dakota	June 30, 2012 and 2011	July 29, 2013
Management and Budget, Office of	June 30, 2013 and 2012	July 16, 2014
Massage, Board of	June 30, 2013 and 2012	July 16, 2014
Mayville State University	June 30, 2013 and 2012	July 16, 2014
Medical Examiners, State Board of	June 30, 2011 and 2010	July 29, 2013
Medical Examiners, State Board of	December 31, 2012 and 2011	October 2, 2014
Milk Marketing Board	June 30, 2012 and 2011	July 29, 2013
Mill and Elevator Association	June 30, 2012 and 2011	January 21, 2014
Minot State University	June 30, 2013 and 2012	October 2, 2014
North Dakota Development Fund, Inc.	June 30, 2013 and 2012	January 21, 2014
North Dakota Development Fund, Inc.	June 30, 2012 and 2011	July 29, 2013
North Dakota State University	June 30, 2013 and 2012	October 2, 2014
North Dakota University System annual Financial Report	June 30, 2012	July 29, 2013
North Dakota University System annual Financial Report	June 30, 2013	October 2, 2014
North Dakota University System Office	June 30, 2012, and 2011	January 21, 2014
North Dakota University System Office Performance Audit	February 4, 2013	March 12, 2013
Oilseed Council, North Dakota	June 30, 2012 and 2011	July 16, 2014
Oilseed Council, North Dakota	June 30, 2012 and 2011	July 29, 2013
Optometry, North Dakota State Board of	June 30, 2012, 2011, 2010 and 2009	July 29, 2013
PACE fund	June 30, 2013 and 2012	January 21, 2014
Parks and Recreation Department	June 30, 2013 and 2012	July 16, 2014
Permitting Process of the Water Appropriations Division of the State Water Commission, Part II Performance Audit	April 23, 2013	July 29, 2013
Physical Therapy, Board of	June 30, 2012 and 2011	July 29, 2013
Plumbing, State Board of	June 30, 2013 and 2012	July 16, 2014
Podiatric Medicine, Board of	December 31, 2013	July 16, 2014
Podiatry Examiners, Board of	December 31, 2012, 2011 and 2010	July 29, 2013
Potato Council, North Dakota	June 30, 2012 and 2011	January 21, 2014
Private Investigative and Security Board	December 31, 2012 and 2011	July 16, 2014
Protection and Advocacy Project	June 30, 2012 and 2011	July 29, 2013
Psychologist Examiners, State Board of	June 30, 2013 and 2012	July 16, 2014
Public Employees Retirement System	June 30, 2013 and 2012	January 21, 2014
Public Employees Retirement System	June 30, 2012 and 2011	July 29, 2013
Public Finance Authority	December 31, 2013 and 2012	July 16, 2014
Public Finance Authority	December 31, 2012 and 2011	July 29, 2013
Public Instruction, Department of	June 30, 2013 and 2012	July 16, 2014
Public Service Commission	June 30, 2013 and 2012	July 16, 2014
Racing Commission, North Dakota	June 30, 2013 and 2012	October 2, 2014
Real Estate Commission, State	June 30, 2013	July 16, 2014
Real Estate Commission, State	June 30, 2012	July 29, 2013
Rebuilders loan program	June 30, 2013 and 2012	January 21, 2014
Rebuilders loan program	December 31, 2012 and 2011	July 29, 2013
Reflexology, North Dakota Board of	June 30, 2013	July 16, 2014
Registration for Professional Engineers and Land Surveyors, State Board of	June 30, 2013	July 16, 2014
Registration for Professional Soil Classifiers, State Board of	June 30, 2013	July 16, 2014
Respiratory Care, State Board of	January 31, 2011 and 2010	July 29, 2013
Respiratory Care, State Board of	January 31, 2013 and 2012	July 16, 2014
Retirement and Investment Office, State	June 30, 2013 and 2012	January 21, 2014
Retirement and Investment Office, State	June 30, 2012 and 2011	January 21, 2014
Secretary of State	June 30, 2012 and 2011	July 29, 2013
Securities Commissioner	June 30, 2012 and 2011	July 29, 2013

Seed Department, State	June 30, 2012 and 2011	July 29, 2013
Social Work Examiners, North Dakota Board of	June 30, 2013 and 2012	October 2, 2014
Soybean Council, North Dakota	June 30, 2013 and 2012	July 16, 2014
State Auditor	June 30, 2013 and 2012	January 21, 2014
State College of Science, North Dakota	June 30, 2013 and 2012	July 16, 2014
State Electrical Board	June 30, 3013 and 2012	October 2, 2014
State Fair Association, North Dakota	September 30, 2012 and 2011	January 21, 2014
State Treasurer's office	June 30, 2013 and 2012	October 2, 2014
Statewide CAFR	June 30, 2012	July 29, 2013
Statewide CAFR	June 30, 2013	July 16, 2014
Statewide single audit	June 30, 2012 and 2011	July 29, 2013
Stockmen's Association, North Dakota	December 31, 2013 and 2012	July 16, 2014
Stockmen's Association, North Dakota	December 31, 2012 and 2011	July 29, 2013
Student loan trust	June 30, 2013 and 2012	January 21, 2014
Student loan trust	June 30, 2012 and 2011	July 29, 2013
Tax Commissioner	June 30, 2013 and 2012	October 2, 2014
Tobacco Prevention and Control Policy, Center for	June 30, 2013 and 2012	July 16, 2014
Transportation, Department of	June 30, 2013 and 2012	October 2, 2014
University and School Lands, Board of	June 30, 2013 and 2012	January 21, 2014
University and School Lands, Board of	June 30, 2012 and 2011	July 29, 2013
University of North Dakota	June 30, 2013 and 2012	October 2, 2014
Valley City State University	June 30, 2013 and 2012	July 16, 2014
Veterans' Affairs, Department of	June 30, 2012 and 2011	July 29, 2013
Veterans' Home	June 30, 2013 and 2012	January 21, 2014
Veteran's Home	June 30, 2013 and 2012	July 16, 2014
Veterinary Medical Examiners, State Board of	June 30, 2012 and 2011	July 29, 2013
Water Appropriation Division of the State Water Commission, performance audit	January 22, 2013	January 24, 2013
Water Commission, State	June 30, 2013 and 2012	October 2, 2014
Water Well Contractors, State Board of	June 30, 2012	July 16, 2014
Wheat Commission, North Dakota	June 30, 2012 and 2011	January 21, 2014
Williston State College	June 30, 2013 and 2012	July 16, 2014
Workforce Safety and Insurance	June 30, 2013 and 2012	January 21, 2014
Workforce Safety and Insurance	June 30, 2012 and 2011	July 29, 2013

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 2015 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. Duty under Section 54-35-25 to establish a policy regarding promotional expenses made on behalf of the Legislative Assembly;
4. Responsibility under Section 54-03-20 to make recommendations to adjust legislative compensation amounts;
5. Responsibility under Section 54-03-20 to establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session;
6. 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;
7. Responsibility under Section 4-24-10 to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees;
8. 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; 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 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.

The Legislative Management also assigned to the committee the legislative intent under 2013 Session Laws, Chapter 32, Section 11, to consider the implementation of a limited bill analysis report pilot project during the 64th Legislative Assembly.

Committee members were Representatives Al Carlson (Chairman), Bill Devlin, Corey Mock, Kenton Onstad, and Don Vigesaa and Senators Tim Flakoll, Joan Heckaman, Ray Holmberg, Jerry Klein, Mac Schneider, and Rich Wardner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

LEGISLATIVE SPACE RENOVATION PROJECTS

Legislative Council Area

The committee reviewed the need for additional professional staff offices for the Legislative Council. The Legislative Council currently is authorized 37 positions. Of high importance is the need for space that ensures the confidentiality of legislative work product and privacy. The Legislative Council staff explored options with the Office of Management and Budget for nearby space used by other agencies, but no space was available. The committee explored an option to use the vacated former Information Technology Department space near the Capitol Cafeteria, but using that space would widely separate Legislative Council staff.

The committee approved plans relocating the Legislative Council library to the Senate committee clerk area, immediately to the west of the current library. The approved plans included relocating the Senate clerks to the

secretarial service area to the west of the House committee clerk area. The secretarial service area is underutilized during the session, with only four contract secretarial staff and one tour guide in the space. The approved plans also included relocating the contract employees for secretarial and telephone message services to the bill and journal room. In addition, the plans proposed using copiers to provide paper copies of bills on demand, thus allowing replacement of much of the shelving in the room with work areas.

The existing library area was remodeled to include six offices and a new stairwell to the information technology area above that space.

Senate Conference Room

The committee approved a new table, chairs, and chair rails and audio, visual, and technology upgrades for the Senate conference room. This will eliminate the remnants of the room's former use as a telephone message area and will provide a comfortable environment in which to meet with visitors and hold conference committee meetings. The committee also was informed of upgrades to the Missouri River Room sound system.

House Conference Room

The committee approved similar audio, visual, and technology upgrades to the House conference room.

First Floor Legislative Study

The committee approved upgrading the first floor legislative study on the west side of the Senate chamber. Possible uses for the study include meetings. Approved upgrades include a table and chairs and audio, visual, and technology upgrades in a manner to provide for flexible and functional use.

House and Senate Chambers Audio Systems

The committee received information regarding problems occurring with the House and Senate chambers audio systems indicating the systems are dated and do not perform adequately. In addition, repair of the electronics was becoming difficult due to age. During the 2013 session, equipment had to be taken from the Brynhild Haugland Room in order for the House to gavel into session because the installed equipment failed. Also, there is a substantial difference between balcony and floor acoustics.

The committee received a proposal for replacement of the audio systems. The proposed systems included replacement of the ceiling speakers with speaker arrays on the front walls of the chambers and replacement of the microphones used by members.

The committee approved replacement of the House and Senate audio systems. The committee also approved the installation of Renkus-Heinz ICONYX Digitally Steerable Line Array Loudspeaker Systems on the front walls of both chambers, painted to match the wood, and located near the ends of the concave portions behind the presiding officers. The committee approved replacement of the members' microphones with Audio-Technica 6-Inch Gooseneck Microphones with lighted mute switch at all members' desks.

Committee Room Video and Audio

During the 2011-12 interim, the committee reviewed plans for providing video and audio recording of meetings in committee rooms. The Harvest and Roughrider Rooms were approved as the first rooms in which the video and audio capabilities would be installed before the 2013 legislative session.

The systems in the Harvest and Roughrider Rooms are available for streaming and recording committee meetings, with manual meeting management--e.g., start and stop. The software does not provide for indexing of agenda items, presenters, or members present. Thus, users would not be able to find easily a particular speaker or agenda item during a review of the recordings.

The committee reviewed plans for installing automated committee meeting management, as there is for management of the video and audio of sessions in the chambers. The automated management would allow for viewing a live agenda next to the video during the meeting. Automated indexing of agenda items, presenters, and members present would provide an efficient, well-organized record of committee meetings.

The committee discussed whether to implement video streaming and recording of committee meetings. One question considered is whether to invest approximately $65,000 for Sliq Media Technologies to complete the index functionality of the Harvest and Roughrider Rooms. This functionality would be usable in other committee rooms if cameras are installed in those rooms in the future.

A major question relates to the policy for the use of this technology. Some committee chairmen have had a few interim committee meetings streamed in recent interims. In those situations, the Legislative Council staff coordinated with the State Department of Health to conduct the stream and recording.

The consensus of committee members was to wait until next biennium to see how technology develops and how many chairmen request meetings be streamed.

Temperature Control for Technology Equipment

Because of the installation of servers and other equipment behind the chambers to support the voting boards and sound systems, temperature control in that space becomes a concern. The committee approved upgrades to the heating, ventilation, and cooling systems in those areas.

LEGISLATIVE PROMOTIONAL EXPENSE POLICY

Section 54-35-25 requires the Legislative Management to establish a policy regarding promotional expenses made on behalf of the Legislative Assembly.

The committee approved a *Legislative Promotional Expense Policy*. The policy provides a promotional expense may be incurred and paid by the Legislative Council from Legislative Council, Legislative Management, or Legislative Assembly funds upon approval of the Chairman of the Legislative Management. All promotional expenses incurred and paid by the Legislative Council under the policy must be reported to the Legislative Management. Promotional expenses are defined as expenses that are incurred to make the Legislative Assembly, Legislative Management, or Legislative Management committees better known to or improve relationships with legislative entities of other states or provinces. The policy is written broadly so as to reduce questions of whether any particular expense is allowed, such as a pen, mug, cup, pin, or picture.

BILL ANALYSIS PILOT PROJECT CONSIDERATION

Section 11 of Chapter 32, 2013 Session Laws, declared legislative intent that the Legislative Management consider the implementation of a limited bill analysis report pilot project during the 64th Legislative Assembly.

The committee reviewed the history of bill summaries, prepared by the Legislative Council legal staff from the 1970s to 1991, and the reasons that program was eliminated--little value to legislators at the cost of a heavier workload added to the Legislative Council staff's heavy workload in the evenings.

The committee also considered the items a bill analysis should contain--fiscal analysis and legal analysis--and the impact of an analysis that pointed out constitutional or other issues of concern.

The committee received information on bill analyses processes of a number of states, with special focus on the bill analysis process of the Washington State Legislature. In Washington, bill analyses are prepared by committee staff assigned by the nonpartisan Office of Program Research in the House (69 staff) and the nonpartisan Senate Committee Services (59 staff) in the Senate. Of special note was the total number of staff assigned to committees in the Washington Legislature--128.

The information received by the committee pointed out the feasibility of any bill analysis program, whether on a pilot program basis or not, depends on recognition of at least four factors. The analysis should be prepared by an independent, nonpartisan staff, not subject to influence to specially word the analysis; the analysis should be prepared by staff who are present at committee hearings, so as to hear testimony on the bill; the analysis could identify issues not appreciated by some, such as constitutional issues or indirect impacts not readily apparent; and the analysis, and the staff preparing the analysis, may be criticized as causing "death by bill analysis."

The committee makes no recommendation on implementation of a bill analysis program, whether on a pilot project or permanent basis. Concerns noted were the impact on workload of the Legislative Council staff, the impact on current structure and responsibilities of the Legislative Council staff, and the insertion of the Legislative Council staff in the process of providing an analysis for which the sponsor or carrier of a measure is responsible.

LEGISLATIVE SPACE USE

Legislative Chambers and Memorial Hall

Since 1981, the Legislative Management has delegated to the committee the responsibility under Section 54-35-02(8) to control the legislative chambers and any permanent displays in Memorial Hall. In exercising this responsibility, the committee has adopted guidelines for use of the legislative chambers and displays in Memorial Hall.

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 6-7, 2014, and November 5-6, 2015; use of the House chamber by the Secretary of State for a statewide biennial election conference on February 26-27, 2014; use of the House chamber by the Department of Trust Lands for oil and gas lease auctions on May 6, August 5, and November 4, 2014; use of the House chamber by the North Dakota Leadership Seminar for the legislative process portion of the leadership development seminar for high school sophomores on May 31, 2014; and use of the Senate chamber by the Department of Trust Lands on July 21, 2014, for a roll call of states at the summer conference of the Western States Land Commissioners Association.

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.)

The committee reviewed an offer of a donation of a grand piano to be placed in the west end of Memorial Hall. The policy regarding displays in Memorial Hall provides a permanent display may not be placed in Memorial Hall unless the following requirements are met:

1. The display commemorates or has some relationship to the legislative branch of state government, or to a historical phenomenon or event of significance to this state or nation.
2. The display will not disrupt or interfere with legislative use of Memorial Hall.
3. The sponsors of the display assume all risks involved in connection with the display.

The policy further indicates that statues, busts, or portraits that have been authorized by the committee are considered permanent displays. The committee recommended the policy be revised to allow for the placement of a grand piano on the west end of Memorial Hall. The committee also supported acceptance of the donation of the grand piano on the condition the Office of Management and Budget provide for the insurance and maintenance of the piano.

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 revised the policy as necessary 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 2013 legislative session regarding rules issues.

House Rule 202 - Member to Preside in Place of Speaker

House Rule 202 allows the Speaker of the House to leave the chair and appoint a member to preside, but leave of the House is required for a longer time than one day. During the 2013 session, a question arose as to why there is a requirement for leave of the House because the tradition has been to appoint a former Speaker to preside.

The committee recommends amendment of House Rule 202 to remove the requirement for leave of the House to appoint a member to preside during an absence of the Speaker for a longer time than one day.

Senate and House Rules 306 - Rules of Debate

Senate and House Rules 306 provide no member may speak more than twice on the same question without leave of the House, nor more than once until every member choosing to speak has spoken, nor more than 10 minutes the first time nor more than five minutes the second time. The rule does not apply to the Majority and Minority Leaders and the chairman of the committee "or" a spokesman designated by that chairman. During the 2013 session, a question arose as to whether the limits on debate applied to a chairman who designated a carrier of the measure.

The committee recommends amendment of Senate and House Rules 306 to clarify that the limits on debate do not apply to the leaders and the chairman, "nor" to a spokesman designated by the chairman.

Senate and House Rules 339.1 - Voice Votes on Resolutions

Various rules govern vote requirements for resolutions. Senate and House Rules 340 require recorded roll call votes on resolutions that provide for the expenditure of money or propose a constitutional amendment. Senate and House Rules 320 provide for a roll call vote when requested by one-sixth of the members present. Senate and House Rules 343 provide for verification votes when the vote has been announced. Joint Rule 208 provides that a recorded roll call vote is necessary on items on the consent calendar only if a recorded roll call vote is required under Senate or House Rules 340. During the 2013 session, a question arose as to whether the rules on voice, verification, or roll call votes on resolutions could be clarified.

The committee recommends creation of Senate and House Rules 339.1 to provide that action that results in final disposition of a resolution must be taken by voice vote, except as provided under Senate and House Rules 340 or when requested under Senate and House Rules 320 or 343. The effect is to describe, by rule, the general practice followed in voting on resolutions.

Senate Rule 401 - Introduction of House Measures

Senate Rule 401 limits to six the number of sponsors of bills and resolutions that may be introduced in the Senate. In January 2013, the House increased its allowed number of sponsors from six to 12. Technically, Senate Rule 401 does not allow introduction in the Senate or House measures with more than six sponsors.

The committee recommends amendment of Senate Rule 401 to restrict the six sponsor limit to Senate bills or resolutions.

Senate Rule 402 - Appropriations Introduction Deadline

Senate Rule 402 provides no member other than the Majority and Minority Leaders may introduce more than three bills as prime sponsor after the 10th legislative day, and no bills may be introduced after the 15th legislative day. The committee discussed whether bills containing appropriation clauses should be required to be introduced by the 10th legislative day. The intent of requiring introduction before the final bill introduction deadline is to provide for earlier three-day and two-day committee consideration of those bills and earlier referral to the Appropriations Committee for its consideration.

The committee recommends amendment of Senate Rule 402(1) to require Senate bills containing an appropriation clause to be introduced before the 11th legislative day.

Senate and House Rules 507.1 - Hearing of Measures

Senate and House Rules 328 require bills and resolutions to be referred to committee upon introduction. Senate and House Rules 506 require committee chairmen to provide notice of the time and place of committee meetings and to provide a list of the bills and resolutions to be heard. Senate and House Rules 508 establish deadlines for holding bills and resolutions in committee, as well as deadlines for reporting bills and resolutions back to the House. During the 2013 session, a question arose as to whether the rules should specifically require a hearing, rather than rely on the implication that a hearing is required.

The committee recommends creation of Senate and House Rules 507.1 to require every bill and resolution referred to committee to be scheduled for a hearing and a hearing to be held. The rule would not apply to a bill or resolution that is withdrawn before being scheduled or before the hearing is held.

Other Rules Proposals Considered

The committee reviewed proposals to provide that a motion to refer or refer to committee is nondebatable; to allow a request to divide a question to be made only after the question has been stated but before the carrier or another person speaks on the question; to require measures to be engrossed in the second house; and to allow a member to read the member's speech on the floor.

LEGISLATIVE INFORMATION SERVICES

Beginning with the 1985-86 interim, the 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 2013 legislative session, 25 entities paid to pick up a set of bills and resolutions from the bill and journal room, 7 entities paid to pick up a set of journals, and 2 entities paid to receive the journal index.

The committee established the following fees with respect to these documents during the 2015 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, $485 if mailed; $110 for a set of daily journals of the Senate and House, $260 if mailed; and $30 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 $395 subscription fee to receive these reports from the bill and journal room during the 2013 legislative session.

The committee determined that printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 2015 bill status reports and pay a $425 subscription fee, $565 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 2013 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 secretarial, telephone message, and 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, 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, seven days a week during regular legislative sessions. It has been the policy to allow a caller to 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.

The committee made no changes regarding the incoming WATS line telephone message service for the 64th Legislative Assembly. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

LEGISLATIVE COMPENSATION

Legislative Compensation Review

In 2011 the Legislative Assembly repealed the law providing for a 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 2015-17 budget of the Legislative Assembly should include funding for changes to legislative compensation equal to the percentage changes provided for state employee salary increases during the 2015-17 biennium and the necessary related statutory changes. The initial plan is to include funding to allow for a 4 percent increase in legislative compensation amounts for monthly pay, session pay, interim pay, and leaders' additional monthly pay for the first year of the biennium and a 3 percent increase for the second year of the biennium, to be adjusted as necessary to compare to the levels provided state employees.

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. Section 54-03-20 provides the maximum lodging reimbursement for legislators during a regular legislative session may not exceed 30 times 70 percent of the daily lodging reimbursement for state employees and officials. Under that formula, legislators may receive up to $1,569 per month as reimbursement for lodging.

The committee made no changes to the legislative expense reimbursement policy that was in place for the previous two legislative sessions--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.

Online Travel Request Forms

The committee received information on the development of out-of-state travel request forms for legislators. The forms are intended to be available on legislators' laptop and iPad computers. A legislator seeking approval for travel out of state is to fill out the form and transmit it electronically for approval. The use of electronic request forms is intended to reduce paperwork and the time spent in routing forms.

LEGISLATIVE COMPUTERS

Legislator Data Plan Reimbursement

Before November 1, 2012, legislators received reimbursement for their mobile data plans two ways. The method for non-Verizon users required legislators to submit a voucher at least quarterly to the Legislative Council. The method for Verizon users required legislators to participate in split billing--their data costs associated with their plan were billed separately to the state of North Dakota.

During the 2011-12 interim, the committee approved a new method of reimbursing legislators for their data plans effective November 1, 2012. All participating legislators were 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 provided monthly reimbursement at that level until the legislator incurred a change in mobile data cost, contract, or vendor. At such time, the legislator was to submit a new request form to the Legislative Council for reimbursement of the legislator's mobile data costs, identifying data costs associated with legislative business, along with a new copy of the wireless carrier bill showing new mobile data costs.

The committee reviewed the effects of the November 2012 policy. The "new" method of reimbursement was found to have its own problems. Plan configurations and options, as well as devices, change so frequently that legislators may not have selected the most cost-effective or friendly plan. In addition, constantly revising the policy to address every variation of plan configurations was not viewed as feasible.

At the time the committee reviewed the November 2012 policy, 133 members were participating in broadband reimbursement, which ranged from $23.05 to $93.99 a month. The average monthly amount reimbursed was $49.22. There were 39 members participating in the mobile data reimbursement, which ranged from $15.75 to $90 a month. The average monthly amount reimbursed was $32.46.

The committee approved discontinuance of the November 2012 policy and approved a $90 per month information technology stipend--the amount included in the 2013-15 budget per legislator per month for technology-related costs--for legislators who sign an agreement that they will use the stipend for technology-related costs. The new policy eliminates the need for split billing and state involvement with reimbursements. The committee recognized that a stipend would be included in a member's taxable income, but broadband and mobile data expenses are deductible expenses and this should be a wash for a member.

Personal Computer Use Policy

The committee reviewed the *Policy on Use of Personal Computers by Legislators*, last revised in November 2012. 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 policy also addresses the use of tablet computers, provides for copying of legislator information to replacement computers, includes a procedure on purchase of old computers, and authorizes a fee for acquiring a replaced computer and a computer assistance fee.

The committee adopted a revised policy to account for the decision to implement the stipend reimbursement for data plans.

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 laptop computer and tablet training sessions on Tuesday and Wednesday for returning legislators.

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 2015 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. The association also is planning to provide opportunities as in past sessions for legislators to participate in health screenings and other educational and wellness activities during the 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 comprehensive health assessment will be continued during the 2015 legislative session as provided through the doctor of the day program by the North Dakota Medical Association during the previous two legislative sessions.

Legislators' Supplies

Stationery

Before 2013, every legislator had 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 was allowed to 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 were entitled to as much regular and Monarch stationery as needed. In addition, an electronic letterhead was provided to all legislators to use as a template to print correspondence on regular paper and envelopes.

That policy was changed for the 2013 legislative session. In 2012, 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. Because computers are provided to all legislators, the committee concluded there was little need for continuing to provide individualized stationery and envelopes when templates are provided for legislators to use through software on their computers.

The committee approved continuation of the policy of providing electronic letterhead for use in printing letters and envelopes.

Brief Bags

The committee approved continuation of the policy, first established in 1984, of providing a brief bag 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 saddle brown leather brief bag that includes an embossed Great Seal on the side, "North Dakota Legislative Assembly" on the outside of the name tag, and the name of the legislator on the inside of the name tag.

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.

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

Starting in 2010, each legislator was provided with a credit card-sized photo identification card containing the legislator's current 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 2014 legislative photograph.

Legislator Photographs

The committee approved the invitation to bid for photography services to the 64th Legislative Assembly. The invitation to bid contained generally the same specifications as the contract for the 63rd Legislative Assembly. The photographs of legislators are to be taken during the organizational session in 2014, and the photographs of the six elected legislative officers are to be taken during the first week of the regular session.

The photographer is to provide the digital image of the pose selected by the photographer to the Legislative Council by Wednesday, December 17, 2014, 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 20, 2015.

Two notable changes to the invitation to bid--electronic distribution of proofs to legislators must be made individually to individual legislators rather than a bulk distribution, and the composite proofs are to be sent to the Secretary of the Senate or Chief Clerk of the House, as appropriate, for proofing.

The invitation to bid was sent to 242 photography firms in the state. Eight firms submitted bids--Legacy Photography, Fargo, $2,559; J&K Portraits, Fargo, $3,800; Anderson Photography, Crosby, $4,000; Behl's Photography, Grand Forks, $8,350; Brian's Photography, Grand Forks, $10,694; Tweten's Photography, Grafton, $26,590; Bartak Photography, Grand Forks, bid did not meet requirements; and Michael J. Photography, Minot, bid was received after deadline. The committee awarded the contract to Anderson Photography.

Session Employee Positions

The committee reviewed the number of employee positions during the 1993 and 2013 legislative sessions; the impact computerization has had on both houses; the 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 and approved a legislative session employee position plan that proposed for 38 Senate employee positions and 46 House employee positions during the 2015 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 employment of the number of assistant sergeants-at-arms at the 2013 level.

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 2013 legislative session. The committee received information on the effect of providing a general increase reflecting the increases of 4 percent and 3 percent approved by the 63rd Legislative Assembly for state employees in 2013 and 2014.

The committee determined that the differential in daily compensation between the three-day committee clerks and the two-day committee clerks and assistant committee clerks should be reduced due to the two-day and assistant clerks' assistance of three-day committee clerks in completing their duties. The 2013 differential was $12 and the committee approved reducing the differential to $5. The committee recommends the daily compensation rates during the 2013 legislative session be increased to reflect increases of 4 percent and 3 percent. As a result of this recommendation, compensation will range from $112 to $184 per day ($14 to $23 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.

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 2013 legislative session. Most 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 Legislative Assembly has contracted with a third party to provide secretarial services. Beginning with the 2013 legislative session, the Legislative Council staff assumed the responsibility for handling payroll for the Legislative Assembly.

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 has 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 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 2015 legislative session to provide three, or if necessary four and one-half, employees for secretarial, telephone message, and bill and journal room services. Beginning with the 2015 legislative session, the secretarial and telephone message and the bill and journal room will be collocated in the bill and journal room.

The invitation to bid was sent to four temporary personnel services in the Bismarck-Mandan area. The committee received one bid--$577.60 per day for approximately 75 days during the legislative session for four and one-half employees and $162.40 per day for one bill and journal room employee for 17 days before the legislative session by Spherion Staffing, Bismarck. The hourly pay is at least $14.50 for the employees and at least $15 for the onsite supervisor.

The committee accepted the bid by Spherion Staffing to provide secretarial, telephone message, and bill and journal room services during the 2015 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 2012. 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. During recent legislative sessions, the program has provided the Legislative Assembly with the assistance of law 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 64th 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, which was set at $3,250 per month for the four-month program.

Legislative Tour Guide Program

During the past 19 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 2015 legislative session.

Chaplaincy Program

The Bismarck-Mandan Ministerial Association has 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 2015 legislative session.

The committee authorized the Legislative Council staff to notify all legislators that they have until December 31, 2014, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2015 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2014 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. The agenda includes a computer distribution and training session for new legislators at 3:15 p.m. on Monday and additional computer distribution and training sessions on Tuesday and Wednesday. The committee changed the agenda to combine the Legislative Management report and the staff presentation on ethics during the joint session at 9:10 a.m. on Tuesday. The committee also removed from the agenda the report of the Uniform Laws Commission, with the intent of having the standing Judiciary Committees meet jointly during the first full week of the legislative session to receive a more extensive report of the recommendations of the Uniform Laws Commission.

State of the State Address

During the 2013 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 2015 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 2015 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 64th Legislative Assembly on the third legislative day.

Agricultural Commodity Promotion Groups Report

The committee reviewed Section 4-24-10, which requires 14 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 9, 2015--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 9, 2015.

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 12, 2015.

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.

COUNCIL OF STATE GOVERNMENTS MIDWESTERN LEGISLATIVE CONFERENCE

The committee received a report regarding the 2015 Midwestern Legislative Conference which will be hosted by North Dakota in Bismarck. The conference will be held July 12-15, 2015. The committee was informed a fundraising committee has been appointed to help raise funds for the conference. Because the state only has the opportunity to host the conference approximately once every 12 years, committee members recognized the importance of supporting the conference and making the event memorable for attendees. The committee supports the inclusion of $350,000 in the Legislative Assembly budget request for the 2015-17 biennium to assist in the hosting of the 2015 Midwestern Legislative Conference, with the expectation the amount budgeted will be reduced by any additional funds that are raised.

TAXATION COMMITTEE

The Taxation Committee was assigned six studies. House Concurrent Resolution No. 3019 (2013) directed a study of the property tax system. Senate Concurrent Resolution No. 4030 (2013) directed a study of applying property tax rates against true and full value of property. Section 10 of Senate Bill No. 2036 (2013) directed a study of controlling the growth of property tax levies including an assessment of the effectiveness of state-funded property tax relief. The Chairman of the Legislative Management directed a study of state economic development tax exemptions including the desirability of utilizing a regular review process to assess the effectiveness of those exemptions. Section 2 of Senate Bill No. 2314 (2013) directed a study of the effectiveness of local property tax exemptions and other economic development incentives. Section 1 of Senate Bill No. 2279 (2013) directed a study of the forest stewardship tax.

The Legislative Management directed the committee to receive eight reports. These include reports on rules relating to supervision of assessment officials, county use of allocations of oil and gas gross production tax revenues, employment data used in determining oil and gas revenue allocations, activities of each angel fund in the state, cost-benefit analysis during the 2013-14 interim of certain coal severance tax exemptions, state grantor and business tax incentives, renaissance zone progress, and cities in which a renaissance zone is included in a tax increment financing district.

Committee members were Senators Dwight Cook (Chairman), Randall A. Burckhard, Jim Dotzenrod, Lonnie J. Laffen, Ronald Sorvaag, and Jessica K. Unruh and Representatives Wesley R. Belter, Jason Dockter, David Drovdal, Glen Froseth, Patrick Hatlestad, Craig Headland, Jim Kasper, Jerry Kelsh, Scot Kelsh, Mike Nathe, Mark S. Owens, Dan Ruby, Jim Schmidt, Robin Weisz, and Steven L. Zaiser.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

PROPERTY TAX SYSTEM STUDY

House Concurrent Resolution No. 3019 (2013) directed the committee to study the property tax system and examine options for improvements that could reduce the property tax burden and enhance the fairness and uniformity of the property tax system.

Background

The impetus for a broad study of the property tax system arose due to various taxpayer concerns expressed to legislators regarding the fairness and uniform application of the current system. In recent years, the property tax system has been plagued with criticisms and subject to numerous legislative efforts aimed at reducing the overall property tax burden and enhancing levels of fairness and uniformity in the application of property tax assessment methods statewide. In considering potential avenues for improving the property tax system, the committee reviewed the history behind the system's evolution as well as detailed aspects of its current application.

Constitutional Provisions and Case Law

The committee reviewed the origins of property tax law in North Dakota by examining the original language enacted in Article XI, Section 176, of the 1889 Constitution of North Dakota, which provided that "laws shall be passed taxing by uniform rule all property according to its true value in money." The committee learned of the ensuing changes made to this provision through the 1914 enactment of Article X, Section 5, of the Constitution of North Dakota, which provides that "taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax." The objective of the 1914 amendment was to replace the requirement that all property be uniformly taxed with a grant of authority to the Legislative Assembly to recognize different classifications of property and apply uniform taxation within each classification created. Despite the constitutional authority provided in the 1914 amendment, the Legislative Assembly did not provide for statutory classification of property in subsequent legislative sessions which lead to the pivotal 1979 North Dakota Supreme Court decision in *Soo Line Railroad Co. v. State*, 286 N.W.2d 459.

In the case, three railroads, including the Soo Line Railroad, challenged the assessments on its property in North Dakota claiming the valuations were grossly excessive. The court concluded that the use of a higher percentage of assessed value for centrally assessed property than that which is used for locally assessed property was impermissible, absent legislation permitting such classification under Section 176 of the Constitution of North Dakota. The court stated "[w]e will no longer countenance de facto classification of property in North Dakota for purposes of taxation." The court held "[a]ll tax assessments, beginning with the 1980 computations, must be uniform in North Dakota until such time as the legislature provides for classification of different levels of property for purposes of

taxation." This decision was the catalyst for the substantial restructuring and classification of the property tax system by the 1981 Legislative Assembly.

1981 Property Tax Reform

Following the decision in *Soo Line Railroad*, the 1979-80 Legislative Council's interim Finance and Taxation Committee requested and received authority from the Legislative Council to study property taxation restructuring. The committee obtained information based on the sales ratio study showing assessments as a percentage of market value for residential, commercial, and agricultural property as well as property assessed by the State Board of Equalization. Based on the information received, the committee recognized it would be necessary to establish classifications for these property types and recommended three alternative bill drafts, none of which were ultimately enacted.

Property tax reform was implemented by the 1981 the Legislative Assembly through the passage of Senate Bill No. 2323 to remedy the unconstitutionality of the state's prior method of taxation. Senate Bill No. 2323 aimed to restructure the property tax system based on the following objectives:

1. Establish four classifications of property for assessment purposes.
2. Improve and equalize assessments across the state.
3. Provide for more complete information for the sales ratio study to provide a measure for the State Board of Equalization to judge the uniformity of assessments against market values in all areas of the state.
4. Transition agricultural property assessment from market value to a productivity value basis, to eliminate reliance on the rapid and erratic changes in market value and establish a more stable and generally lower valuation for agricultural property.
5. Provide a method to preserve levy authority based on the taxing authority level of political subdivisions which existed prior to the potentially dramatic changes that could be caused by the bill.
6. Gradually bring the taxable value of centrally assessed property into a state of relative equality with other commercial property and do so immediately for railroad property to comply with a mandate of federal law.

The bill provided that starting in 1981, all property must be valued at its true and full value except as otherwise provided by law. The bill provided for valuation and assessment of agricultural lands based on a productivity formula determining a capitalized average annual gross return for agricultural land. The bill provided for protection of taxpayers and taxing districts for 1981 and 1982 based on an option for a taxing district experiencing a substantial decline in valuation to levy the same amount in dollars as the district levied the prior year plus 7 percent. This provision was viewed as a transitional provision that would be effective only for the first two years of property tax restructuring. The provision was included because assessments among taxing districts in the state were extremely variable. In many districts, the new law would have substantially reduced or increased the property tax base.

The erratic pattern of increase or decrease in assessments was caused by several factors. One factor was the mix of the types of property within the assessment district because assessments of some property types increased and some decreased. Generally, higher-quality agricultural land was undervalued in the market and tended to increase in value more rapidly under the productivity valuation approach than lower-quality agricultural land. The state average assessment ratio for agricultural land was 5.9 percent in 1979, but there were significant differences among counties in applied assessment ratios. Another factor in assessment disparity was local considerations influencing assessment of certain property types at a higher or lower rate than other property types. A combination of these factors resulted in large variations in total assessed value among political subdivisions and made it impossible to assure that political subdivisions would retain the same, or even nearly the same, tax base as before the passage of the 1981 legislation. Very significant tax increases or decreases could have occurred in some political subdivisions by application of existing mill levy limitations to the new assessed or taxable values of property within the taxing district.

The bill also required statements of full consideration to be filed with the State Board of Equalization or the Register of Deeds upon the transfer by deed of any property in the state. The bill created definitions for agricultural, residential, commercial, and centrally assessed property. The bill also established the percentage of true and full value for each type of property, which would be its value for tax purposes. The percentages applicable to railroad property were set at an amount equal to those applicable to commercial property due to federal law that prohibited states from assessing railroad property at a higher percentage of value than other commercial property. The amount determined for each property classification was to be known as the assessed value, which proved to be an error requiring correction during the 1981 special session.

1981 Special Legislative Session

Establishing assessed value as 9 or 10 percent of true and full value substantially reduced the debt limit of 5 percent of assessed value imposed on political subdivisions by Article X, Section 15, of the Constitution of North

Dakota. This was corrected by legislation approved in the November 1981 special legislative session providing that assessed value is 50 percent of true and full value, which restored the debt limits for political subdivisions to approximately previous levels. The 1981 special session legislation introduced taxable valuation as the amount against which mill levies are applied to determine property tax liability and provided that residential property taxable value is 9 percent of assessed value; agricultural property taxable value is 10 percent of assessed value as determined under the productivity formula; commercial and railroad property taxable value is 10 percent of assessed value; and centrally assessed property, excluding railroad property, taxable value is 14 percent of assessed value for 1981, 13 percent for 1982, 12 percent for 1983, 11 percent for 1984, and 10 percent after 1984.

1981-82 Interim Finance and Taxation Committee

The 1981-82 interim Finance and Taxation Committee studied the issue of eliminating the "temporary" optional method of determining levy limitations but found no solution and that the disparities would still exist. The "temporary" optional method of determining levy limitations was reenacted by each legislative session from 1983 until 1995 with allowable percentage increases of 4 percent per year for 1983 and 1984, 3 percent per year for 1985 and 1986, 5 percent per year for 1987 and 1988, 5 percent per year for 1989 and 1990, 4 percent per year for 1991 and 1992, 3 percent in 1993, 2 percent in 1994, 2 percent in 1995, and 2 percent in 1996. The 1995 legislation provided for no increase in 1997 and 1998. If a taxing district took the maximum allowable percentage increase each year from 1981 through 1996, it would have increased its levy authority limit in dollars by more than 88 percent plus the amount of allowable increase for new property in the taxing district. The longer the "temporary" optional method of determining levy limits remained in effect, the more dramatic the potential effect of its elimination became. In 1997 a temporary provision was added because of flood disasters to allow a county, city, township, or school district eligible for federal funds on a matching basis as a result of a disaster to levy an amount necessary to match the federal funds. The additional levy was limited to a 2 percent increase over the base year, and the amount levied for this special purpose was to be excluded from future calculations of base year levies. Since 1997, the provision has remained in law in Section 57-15-01.1 and allows a taxing district the option of levying the same amount in dollars as in the highest of the three previous years. This is viewed as protection of levy authority for a political subdivision with declining valuation, but it also allows political subdivision that used the allowable increases from 1981 to 1996 to retain authority for levies that exceed statutory mill levy limits.

Current Property Tax System

After reviewing the history of the property tax system, the committee received an overview of the significant dates applicable to a single property tax cycle to aid in a general understanding of the timelines applicable to taxpayers, tax administrators, and assessment officials. Under the current 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. The committee learned that 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. Hearings are held on the proposed budget and adjustments are made as determined by the governing body. 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 allowable levy limitations. A taxing district may levy taxes based on statutorily established mill levy limitations or may levy taxes up to the greatest amount levied in dollars in any of the prior three years. The main difference is that under mill levy limits, a taxing district gains additional dollars of levy authority from new taxable property and increased assessed values of existing property, under limits based on dollars levied in prior years, additional dollars are only gained from new taxable property. The committee reviewed a schedule of levy limitations for political subdivisions prepared by the Tax Department. The schedule lists 245 grants of authority for specific purpose levies by the state and political subdivisions.

The county auditor determines the mill rate for a taxing district by dividing 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. 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. All property in the state is subject to a county levy and a school district levy and, depending on its location, is subject to a city or township levy and perhaps additional levies of various political subdivisions.

Assessment of Locally Assessed Property

The committee reviewed the methods for assessing 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," which 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 valuation of property is determined as a percentage of assessed valuation, which is 9 percent 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 individual parcels in the taxing district.

Residential and commercial property true and full value is established by local assessors. True and full value of railroad, public utility, airline, and all oil or gas pipeline property is centrally determined 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 by taking 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 is no minimum capitalization rate. Replacement of the statutory capitalization rate with a market-based capitalization rate caused a greater than average increase in agricultural property values in 2012.

An average agricultural value per acre is determined for cropland and noncropland on a statewide and countywide basis. This information is provided by the Tax Commissioner 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 must consider soil type and soil classification data, a schedule of modifiers approved by the State Supervisor of Assessments, and the actual use of the property.

Assessment of Centrally Assessed Property

The committee reviewed the methods for assessing 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 board 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.

Authority to Classify and Exempt Property

The committee reviewed information regarding legislative authority to classify and exempt property under constitutional provisions. Specifically, the committee reviewed Article X, Section 5, of the Constitution of North Dakota which, among other things, provides that "taxes shall be uniform upon the same class of property" and "property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation." The committee also reviewed relevant case law regarding the classification and exempt status of property for property tax purposes.

Payments In Lieu of Taxes

The committee reviewed instances in which enterprises make payments in lieu of taxes rather than paying 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 and taxing districts within 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, for distribution lines, based on location of distribution lines and sales from those lines. Rural electric cooperatives with generating facilities pay 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. Revenues from these taxes are allocated by state law 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 as are mobile homes, certain pipelines, certain transmission lines, and certain forest lands. New and expanding business may be granted the right to make payments in lieu of property taxes under Section 40-57.1-03.

Testimony and Committee Deliberations

Assessor Rules and Certification

Following a broad review of the property tax system, the committee addressed a topic that has received considerable discussion among taxpayers--that of a perceived unfairness in property tax assessments. The committee acknowledged that one of the foundational elements needed to achieve fairness in assessments is the requirement that assessments be conducted in an accurate manner.

The committee reviewed the powers afforded to the State Supervisor of Assessments, including the power to suspend or revoke a certificate of an assessment official. The committee received a status report from a representative of the Tax Department, pursuant to Section 7 of Senate Bill No. 2036 (2013), on the development of rules for detailed and efficient administration of Section 57-01-05 regarding supervision of assessment officials. The report indicated a working group had been formed within the Tax Department to identify the core responsibilities of assessment officials and identify instances in which suspension or revocation of assessment credentials would be appropriate. The report also indicated that initial efforts were being focused on providing additional education and training for assessment officials and tax directors.

The committee reviewed information on assessor training requirements in surrounding states and considered a bill draft to replace existing assessor classifications with a single status of certified assessor. The bill draft would require assessment officials to complete 180 hours of instruction to obtain certification. This would increase the current amount of training required for township assessors and assessors of cities under a 5,000 person population who are presently required to compete only 24 hours of training. Transitional provisions in the bill draft provided that certificate holders whose certification expires on or after August 31, 2015, would be subject to the new requirements.

The committee suggested that enhanced training for assessors would result in better assessments and more fairness, but considered whether additional training requirements would cause some assessors to leave the profession and the potential costs associated with increased training. The committee received testimony from a representative of the North Dakota Association of Assessing Officers who expressed support of the association for increased training for assessors. The committee also received testimony from a representative of the North Dakota Association of Counties who summarized responses gleaned from an informal polling of county officials. The summary indicated general support for the bill draft but with some concern for the potential fiscal impact increased training requirements may create. County representatives expressed the opinion that state funding assistance for increased training would bolster county support for the bill draft. The committee received testimony in support of increased training requirements from a representative of the Tax Department.

Based on testimony from interested parties, the committee modified the date by which all assessors shall meet the requirements in the bill draft from July 31, 2015, to July 31, 2017, to allow additional time for assessors to obtain the necessary certification. The committee received testimony from a representative of the North Dakota Association of Assessing Officers indicating an additional two years to obtain the required training would be workable. The committee concluded the bill draft may require additional input and revision during the 2015 legislative session but was an adequate starting point to offering taxpayers additional assurance that their properties are being assessed in a fair and accurate manner relative to other property.

Use of Modifiers in Agricultural Property Assessments

Following the discussion on assessor training requirements, the committee received information regarding inconsistencies in how assessment officials are applying modifiers to agricultural property assessments. In reviewing the role of modifiers in agricultural property assessments, the committee received testimony from a representative of the Tax Department on the process by which assessment officials determine agricultural land values and the resources available to assessment officials in making those determinations.

The Department of Agribusiness and Applied Economics at North Dakota State University (NDSU) computes the average agricultural value per acre of cropland, noncropland, and inundated agricultural land for each county. The Tax Commissioner then provides those values to each county before January 1 of each year. The average value per acre for each township or assessment district is determined by the county director of tax equalization and provided to local assessors. In estimating the average values for each assessment district relative to the county average value, the county director uses soil type and soil classification. In determining the valuation of a parcel, the assessor first uses the soil values determined by the county director of tax equalization. Next, the assessor considers the use of modifiers

to adjust for conditions not documented in the soil survey. The modifiers that may be applied are those each county submits for approval to the State Supervisor of Assessments. Lastly, the assessor considers the actual use of the land for cropland or noncropland purposes.

The committee received testimony from a former employee of the National Resources Conservation Service regarding information on the use of detailed soil survey data. It was explained that the soil survey is an inventory of the soil resources in each county. A productivity index is assigned to soil types to eliminate management decisions in comparing soils. Limitations on the land due to terrain are generally handled with modifiers. However, difficulties can arise due to lack of education about the land on the part of the assessor. Testimony indicated some counties were running into equalization issues as assessors were not taking into account limitations to the soils, such as restricted accessibility. It was pointed out that many of the modifiers being used by counties are factored into the soil classification and use of the modifier and soil classification duplicates the reduction for that soil classification.

The committee considered a bill draft to change how modifiers for agricultural property are applied. Based on information received from the Tax Department, many of the modifiers allowed under existing law for use by counties are already accounted for as factors in the soil survey determination for certain soil types. The bill draft provides for only two allowable modifiers that may be used to make a 30 percent reduction to the soil type valuation of an area. The two allowable modifiers would be for inaccessibility, meaning restricted access by farm implements, or nonconformity, meaning relatively small areas of good soil which is uneconomical to cultivate because of surrounding poor-quality soil.

The committee reviewed the differences between land classified as cropland versus noncropland. The committee learned noncropland acres never change for purposes of the NDSU formula as those acres were distinguished when the original formula was created. The committee learned that if noncropland is cultivated, it is subject to assessment as cropland at the county level. The committee also reviewed the statutory requirements for the treatment of inundated lands.

The committee received testimony from various assessment officials. It appears some counties have transitioned smoothly to use of soils survey data but some have experienced great difficulty. The committee learned that some counties differentiate between cropland and noncropland for valuation purposes and some do not. Some counties take into account the actual use of the land while others determine valuation based on what the highest and best use of the land should be, regardless of how it is actually used. Testimony from a representative in a county that determined valuation based on actual use expressed the opinion that this method of valuation was preferred as it gave landowners input in how their properties are valued. Assessment officials in this county found valuation based on actual use preferable to applying modifiers to a property to reduce the valuation of land not being utilized for its highest and best use. Other county assessment officials provided testimony that modifiers had been used in the past but are no longer used as they were being improperly applied. An assessment official in a county choosing not to apply modifiers expressed the opinion that often the modification an assessor is seeking to apply has already been accounted for in the soil survey. Applying modifiers in these instances would essentially result in a double modification. Some county officials were opposed to the idea of having modifiers set out in statute. County assessment officials did acknowledged the need for property owners to be reassured that assessments were being conducted in a fair manner statewide but felt that certain systems simply worked better in some counties than in others.

The committee expressed concern that counties did not appear to be taking a uniform approach in how valuations for agricultural property are determined. Members of the committee pointed out that one of the main reasons the state shifted to a valuation system utilizing soil types was to avoid this outcome. A valuation system based on soil types was put in place to avoid the unfairness that arises when two property owners, having the same quality of soil on their properties, end up with two different valuations based on how the property owner choses to use the property. It was pointed out that the use of soil survey data was implemented so that property containing high-quality soil should receive a higher valuation, and the management decision of the owner should not affect valuation. Committee members expressed the opinion that for property taxes to be equalized and fair, a property owner's use of the land should not determine the assessment applied to the property.

The committee considered a revised version of the bill draft to allow for a single schedule of modifiers to be adopted by the State Supervisor of Assessments and used statewide. Counties would be restricted to the modifiers provided in that schedule. County directors of tax equalization would provide the schedule of modifiers to assessors within the county along with a copy of the guidelines regarding how modifiers must be applied and instruction on how to use available soil survey resources. The revised bill draft also provides that approved modifiers may be applied to reduce the soil type valuation of an area if a site inspection is conducted by the assessor to confirm the existence of conditions warranting the modification.

Some committee members expressed concern regarding the provision requiring site inspections as testimony indicated that most inspections are currently done through use of aerial imagery services. Concern was expressed that physical site inspections may place an unnecessary burden on assessment officials. The committee acknowledged the difficulties in developing a bill draft that would accommodate all of the assessment practices used throughout the state or resolve every concern regarding the application of modifiers. Despite these concerns, the committee determined the revised bill draft would be worth advancing for further consideration during the 2015 legislative session to help assure taxpayers that agricultural property assessments were being arrived at in a fair manner.

Electric Transmission, Distribution, and Generation Company Reports

The committee was informed that a representative of the Tax Department had discovered a deficiency in the statutory rules regarding reporting requirements for electric transmission, distribution, and generation companies. It was discovered that no statutory reporting requirement existed for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. It was suggested the committee consider a bill draft to require these reports at the time transmission and distribution company reports are required to be filed. Upon review of the bill draft, the committee determined the effective date would need to be delayed to 2016 as the legislation would not take effect early enough to require reports in 2015.

Recommendations

The committee recommends Senate Bill No. 2054 to replace existing assessor classifications with a single status of certified assessor. The bill requires all assessors to be certified and imposes the same 180 hours of training requirements for all certified assessors. The training requirements in the bill represent an increase in the amount of training required for township assessors and assessors of cities under a 5,000 person population. The deadline for assessors to receive certification under the new training requirements is 2017 to allow time for assessors to complete additional training. This bill was also reviewed and recommended by the Advisory Commission on Intergovernmental Relations.

The committee recommends House Bill No. 1054 to restrict use of modifiers in agricultural property assessments to those contained in a single schedule of modifiers adopted by the State Supervisor of Assessments. The bill provides that the single schedule of modifiers would be provided to all assessors as well as a copy of guidelines regarding how modifiers must be applied and instructions on how to use available soil survey resources. The bill requires a site inspection be conducted to confirm the existence of any conditions warranting a modification prior to an approved modifier being applied to reduce the soil type valuation of an area.

The committee recommends Senate Bill No. 2055 to provide reporting requirements for electric transmission, distribution, and generation companies. The bill includes requirements for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. The bill requires the reports be filed at the same time transmission and distribution company reports are required to be filed. The reporting requirements take effect starting in 2016. This bill was also reviewed and recommended by the Advisory Commission on Intergovernmental Relations.

TRUE AND FULL VALUE IN DETERMINING PROPERTY TAX RATES STUDY

Senate Concurrent Resolution No. 4030 (2013) directed the committee to study applying property tax rates against true and full value of property.

Background

In recent years, legislators have reported growing frustration among constituents with understanding how property tax bills and rates are determined because of the complexity of the current method of reducing true and full value to a taxable value amount and then applying local property tax mill rates. Due in large measure to these frustrations, Senate Concurrent Resolution No. 4030 (2013) was introduced as a constitutional amendment to revise relevant constitutional provisions to allow the Legislative Assembly to substitute use of the term assessed value for the current method of using the term true and full value to refer to the actual value of property. The measure as introduced would have reduced the constitutional debt limit rates by 50 percent to retain the same amount as a debt limit because the assessed value would have doubled under that change. During committee discussion of the resolution, it was suggested it may be very difficult to explain to voters why this change is needed and the necessity for a constitutional amendment could be avoided. This could be accomplished if the statutory definition of assessed value remains at 50 percent of the market or formula value of property and taxable value is redefined as 90 percent of true and full value for residential property and 100 percent of true and full value for commercial, agricultural, and centrally assessed property. It was suggested this change would allow the current mill rate method to be modified into a method of applying property taxes as a percentage of the full value for most property types. Following the discussion, the resolution was amended into a study resolution to examine the feasibility of making the proposed changes.

Property Tax Rates Applied Against True and Full Value of Property

Under North Dakota law, property is required to be assessed at its true and full value for property tax purposes. True and full value of agricultural property is determined through an agricultural productivity valuation formula, and other properties are valued through assessment policies designed essentially to determine the current, correct market value of property. The current approach to applying property tax rates against property value was restructured by legislation enacted in 1981. The 1981 restructuring was intended to continue use of mill rates against property values to determine property tax liability.

Article X, Section 15, of the Constitution of North Dakota, provides the debt of any political subdivision may not exceed 5 percent of the assessed value of taxable property in that political subdivision. The constitutional provision also allows voters to approve an increased debt limit for cities and school districts. Because of the constitutional provision, the 1981 restructuring set a statutory definition of assessed value as 50 percent of true and full value to retain approximately the same debt limit for political subdivisions. The 1981 restructuring set the current rate of taxable valuation of commercial, agricultural, and centrally assessed property at 10 percent of assessed value and the taxable valuation of residential property at 9 percent of assessed value. These changes allowed a property tax mill rate of one mill to generate approximately the equivalent amount of property tax revenue as prior to the restructuring.

Testimony and Committee Deliberations

Beginning with the premise that assessed value is 50 percent of true and full value, the committee reviewed an example of property with a $100,000 true and full value for purpose of illustrating how current law functions. In the case of a residential property with a $100,000 true and full value, the taxable value would be equal to 9 percent of the property's $50,000 assessed value, amounting to $4,500. In the case of a property with a $100,000 true and full value classified as something other than residential property, the taxable value would be equal to 10 percent of the property's $50,000 assessed value, amounting to $5,000. A one-mill tax on the taxable value of residential property would be a tax of $4.50 and a one-mill tax on the taxable value of other classes of property would be a tax of $5. Thus, a 300-mill tax on those properties under current law would result in a tax of $1,350 for residential property and a tax of $1,500 for other classes of property.

In attempting to eliminate the use of mills in calculating property taxes, the committee considered the desirability of converting a tax rate of one mill against the true and full value of property to a tax rate of .00005 per dollar of taxable valuation. The committee was of the opinion that a conversion undertaken in this manner would not make property tax calculations adequately understandable for taxpayers.

The committee also considered the option of converting a one mill tax rate to its equivalent rate of 5 cents per $1,000 of taxable valuation if taxable valuation is equal to true and full value for agricultural, commercial, and centrally assessed property and 90 percent of true and full value for residential property. The committee received information indicating a tax rate based on cents per $1,000 of value has been used in other states. The committee reviewed the following table comparing the current method and the optional method of converting a tax rate of one mill to a tax rate of 5 cents per $1,000 in taxable value.

	Residential	Agricultural, Commercial, Centrally Assessed
Current Method		
True and full	$100,000	$100,000
Assessed	$50,000	$50,000
Taxable	$4,500	$5,000
One mill tax (.001)	$4.50	$5.00
300 mills tax (.3)	$1,350	$1,500
Effective tax rate	1.35%	1.5%
Optional Method		
True and full	$100,000	$100,000
Taxable	$90,000	$100,000
Assessed	$50,000	$50,000
One mill equivalent (5 cents per $1,000) tax	$4.50	$5.00
300 mills equivalent ($15 per $1,000) tax	$1,350	$1,500
Effective tax rate	1.35%	1.5%

In reviewing a bill draft to convert the use of a number of mills for property tax determination into use of a number of cents per $1,000 of true and full value, the committee learned that effectuating the change would require revisions to a substantial number of statutory sections. To ensure a detailed review of the changes to these sections, the committee received testimony from various interested parties. The committee received testimony from a representative of the North Dakota Auditor's Association who testified in opposition to the bill draft based on the opinion that little benefit would be realized from making the change and it would likely take counties two to three years to fully change over their

current systems. The committee also received testimony from a representative of the North Dakota Association of Counties who found the effective date concerning. Testimony indicated a 2016 effective date would be more acceptable to county officials. A revised bill draft was prepared to take into account effective date concerns.

The committee questioned whether a one mill equivalent of 5 cents per $1,000 of taxable value was ultimately more user-friendly than a tax rate of one mill. However, the committee found it may be easier for taxpayers to understand a tax rate applied against "actual" value of property than a rate in mills applied against 4.5 or 5 percent of actual value.

Recommendation

The committee recommends House Bill No. 1055 to eliminate the use of mills in calculating property taxes. The bill converts the numerous references within Century Code regarding use of a number of mills for property tax determinations into use of a number of cents per $1,000 of true and full value. The conversion would be effective starting January 2016.

CONTROLLING GROWTH OF PROPERTY TAX LEVIES STUDY

Section 10 of Senate Bill No. 2036 (2013) directed the committee to study controlling the growth of property tax levies, with emphasis on consideration of whether the level of property tax relief received by taxpayers has been commensurate with the amount of state funds distributed to benefit political subdivisions and provide property tax relief to taxpayers, the additional cost to the state of state assumption of funding for some social service functions previously funded by counties compared to the actual reduction in property taxes passed through to taxpayers in each county, whether voter approval through referral or levy and budget restrictions should play a greater role in local taxing decisions, and the feasibility of establishing more restrictive statutory property tax limits to manage the growth of property taxes.

Background

It is generally recognized that a large portion of the costs of owning and using property arise from property taxes levied by political subdivisions. Historically, property taxes have constituted the primary source of funding for local government services. Property tax relief and reform have been recurring topics of legislation in recent legislative sessions as taxpayers continue to express dissatisfaction with property tax burdens. In the 2013 legislative session, there were four constitutional amendments considered and more than 40 bills relating to property tax issues. In addition, an initiated measure to eliminate imposition of property taxes appeared on the June 2012 statewide primary ballot, which was soundly defeated but which heightened the public debate of local control of property tax levels and policy. In undertaking a study on controlling the growth of property tax levies, the committee reviewed the traditional controls placed on growth of property tax levies, recent legislation impacting property tax levies, data summarizing the total amount of property tax collections, and information compiling the cumulative amount of state assistance provided to political subdivisions.

Traditional Controls on Growth of Property Tax Levies

In studying the growth of property tax levies, the committee reviewed the traditional controls that serve to limit the growth of levies. These controls include state law, governing body self-restraint, and taxpayer and citizen participation. Various restricting factors are found in state law, including constitutional and statutory provisions imposing mill levy limits, voter-approval requirements, and debt limits. In addition, statutory provisions have provided for property tax relief and state assumption of program costs for some local government functions. Governing body self-restraint also serves as a traditional limiter on the growth of property tax levies. Local elected officials are presumed to act in the best interests of the political subdivision and taxpayers. Political considerations relating to being elected or reelected serve to restrain local spending to a level deemed acceptable by the majority of voters. Local elected officials are also taxpayers of the taxing district they serve and do not want an excessive property tax levy any more than other taxpayers. Another limiting factor related to governing body restraint involves taxpayer and citizen participation. Taxpayers subject to property tax tend to voice their preferences to elected officials both through direct communication and by casting votes on ballot measures relating to taxing and spending.

2007 Property Tax Legislation

Following a review of these traditional controls, the committee undertook a broad review of the recent history of property tax reform and relief legislation.

The committee reviewed Senate Bill No. 2032 which was the first legislative venture into direct property tax relief. The bill increased the maximum income for those 65 years of age or older to qualify for the homestead property tax credit from $14,500 to $17,500 and increased the maximum amount of property covered by the exemption from $67,511 to $75,000 of true and full valuation. The amount of an assessment increase for property which triggers the requirement for written notice to a property owner was reduced from a 15 percent increase to a 10 percent increase. The time the notice of assessment increases must be delivered to property owners was increased from 10 days to 15 days before the meeting date of the local board of equalization. After June 30, 2007, in any school district election

for approval by electors of unlimited or increased general fund levy authority, the ballot must specify the number of mills, percentage increase in dollars levied, or that unlimited levy authority is proposed for approval and the number of taxable years for which the approval is requested. The length of time electors could authorize unlimited or increased school district general fund levy authority was limited to not more than 10 taxable years. The number of petition signatures required to place the question of discontinuing increased or unlimited school district general fund levy authority on the ballot was reduced from 20 percent of the persons in the school census to 10 percent of the number of electors who cast votes in the most recent school district election. Real estate and mobile home tax statements were required to include three columns showing the amount of property tax levied in dollars against the property by the county, school district, and any city or township that levied taxes against the property for the year of the tax statement and the two preceding tax years.

Senate Bill No. 2032 also provided property tax relief through the state income tax. A homestead income tax credit was provided for individuals for taxable years 2007 and 2008 in the amount of 10 percent of property taxes or mobile home taxes that became due during the tax year and had been paid on the individual's homestead. For purposes of the credit, "homestead" meant the dwelling occupied as a primary residence in this state and any residential or agricultural property owned by the individual in this state. The amount of the homestead income tax credit for a year could not exceed $1,000 for married persons filing a joint return or $500 for a single individual or married individuals filing separate returns. The amount of the homestead income tax credit exceeding the taxpayer's income tax liability could be carried forward for up to five years or the taxpayer could request that the Tax Commissioner issue the taxpayer a certificate in the amount of the excess. A certificate issued to a taxpayer could be used by the taxpayer against property or mobile home tax liability during the ensuing taxable year. The bill also provided for a commercial property income tax credit for an individual or corporation for taxable years 2007 and 2008 in the amount of 10 percent of commercial property taxes or commercial mobile home taxes that became due during the income tax year and had been paid. The amount of the credit for commercial property for a year could not exceed $1,000 for any taxpayer and was limited for individuals to $1,000 for married persons filing a joint return or $500 for a single individual or married individuals filing separate returns.

The Legislative Assembly was informed before the 2009 session that attempting to provide property tax relief through the income tax was fraught with complications because of the differing nature of the two tax types. Substantial administrative difficulties resulted.

2009 Property Tax Legislation

Senate Bill No. 2199 provided property tax relief by appropriating $295 million for the 2009-11 biennium for allocation to school districts to reduce school district property taxes. The bill provided for a reduction of up to 75 mills in school district property tax levies and replacement of the revenue to school districts through mill levy reduction grants. 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 185-mill general fund levy limitation. The bill also provided for transfer of $295 million in 2010 from the permanent oil tax trust fund to the property tax relief sustainability fund to be used for property tax relief allocations after the 2009-11 biennium.

2011 Property Tax Legislation

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 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 provided for replacement of the revenue to school districts 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 that 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.

2013 Property Tax Legislation

In 2013 a variety of legislation was introduced having an impact on property tax levies. This included legislation to provide direct state funding to reduce school district property tax levies, legislation to provide a 12 percent state-paid credit against property taxes paid, and legislation providing for increased eligibility for the homestead property tax

credit and the disabled veterans tax credit. The 2013 Legislative Assembly also made substantial increases to state appropriations and revenue allocations for direct assistance to political subdivisions.

House Bill No. 1013 provided a substantial expansion of state funding for elementary and secondary education. The funding enhancement included a property tax relief component to provide for state payment of up to an additional 50 mills of school district property tax levies and incorporated the previous mill levy reduction grant property tax relief program, which provided a reduction of up to 75 mills in school district property tax levies. The result of combining the relief programs was estimated to provide more than $650 million in property tax relief for the 2013-15 biennium. The bill also reduced school district general fund levy authority to 60 mills and allowed 12 mills for miscellaneous expenses and a 12 percent increase in dollars per year within that limit, to a maximum combined levy of 82 mills.

Senate Bill No. 2036 provided a new approach to property tax relief funding by providing a state-paid credit against property taxes and mobile home taxes in the amount of 12 percent of the taxes levied by all taxing districts against the property. It is estimated the bill will provide $200 million in property tax relief for the 2013-15 biennium. The bill also required the Tax Commissioner to prescribe the form of notice of increased assessments for property owners and the form of the property tax statement. The bill required individuals who previously received notice of increased assessments to also receive mailed notice to inform them of a public property tax levy hearing if the taxing district is considering a property tax increase.

Senate Bill No. 2171 expanded eligibility and qualifying income limits for the homestead property tax credit for individuals 65 years of age or older or permanently or totally disabled. The bill increased the maximum income to qualify for the credit from $26,000 to $38,000. The bill increased the amount of assets of an applicant for eligibility for the credit from $75,000 plus $100,000 of the unencumbered value of the homestead to a combined total asset amount of $500,000. House Bill No. 1015 added an additional income category to qualify for the homestead property tax credit. The bill allowed individuals with an income between $38,000 and $42,000 to receive a reduction of 10 percent of taxable valuation, up to a maximum reduction of $450 of taxable valuation. House Bill No. 1306 increased the amount of the credit for the homestead of a disabled veteran from $5,400 to $6,750 of taxable valuation. The combined property tax relief provided for the homestead credit and disabled veterans tax credit by these three bills is estimated to be more than $27 million for the 2013-15 biennium.

Senate Bill No. 2162 increased the state matching grant for county senior citizen services and programs from a state match of 75 percent to a state match of 85 percent of the amount generated by levy of up to one mill in property taxes in the county for senior citizen services and programs. The bill made an equivalent increase in the portion of state sales, use, and motor vehicle excise tax collections to be deposited in the senior citizen services and programs fund by the State Treasurer.

Property Tax Statistics and Political Subdivision Revenues

Following a review of property tax legislation enacted over the last several legislative sessions, the committee reviewed information relating to property tax statistics and political subdivision revenues. The committee reviewed statewide property and special taxes for taxable year 2012, which totaled nearly $829.2 million. This amount was an increase of 7.6 percent from the 2011 total. The constitutional one-mill levy for the State Medical Center was imposed in the amount of $2.8 million which is included in this total. The State Medical Center amount was an increase of 14.3 percent from the 2011 total, which can be assumed to be the statewide taxable valuation increase from 2011 to 2012. The committee reviewed the following table showing the percentage of the 2012 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 2003 through 2012.

	Percentage of Statewide Property Taxes and Special Taxes[1] Levied in 2012	Percentage Increase in Property Taxes and Special Taxes[1] Levied 2003 Through 2012
School districts	46.18%	15.8%
Counties	29.30%	71.1%
Cities	13.61%	52.5%
City park districts	5.29%	73.3%
Townships	2.53%	81.9%
Rural fire protection	0.91%	109.6%
Garrison Diversion	0.26%	84.9%
Soil conservation districts	0.37%	201.0%
State Medical Center	0.34%	89.0%
Other[2]	0.24%	253.0%
Tax increment districts	N/A[3]	89.1%
Statewide	N/A	39.2%

[1]"Special taxes" include 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 collections are included in city levies in this table. They are listed here only to show the relative rate of increase.

Because the State Medical Center levy is always imposed at a rate of one mill, the 89 percent increase shown in the table for the State Medical Center can be assumed to be approximately equal to the 2003 through 2012 increase in taxable valuation in property statewide.

The committee reviewed information on actual property tax collections levied by political subdivisions for the calendar years 2005 through 2012 and estimated property tax collections levied for calendar years 2013 and 2014. The data reflected an increase in property tax collections in every year from 2005 through 2012 with the exception of property taxes collected in 2010-11, which showed a decrease of 7.6 percent from collections obtained in 2008-09. For 2013, school district property taxes were reduced statewide by 18 percent. However, property taxes levied by counties increased 8.82 percent, city property taxes levied increased 6.84 percent, township levies increased 9.18 percent, and city park district levies increased 7.86 percent. The net reduction in property taxes statewide was only 3.86 percent. The 12 percent state-paid credit resulted in a reduction in property taxes paid by taxpayers of almost 16 percent.

The committee examined 2013 property tax levies for each county and found total taxes levied actually increased from 2012 to 2013 in some counties. It appears property tax relief is not reaching all taxpayers in equal amounts and some committee members expressed concern that some political subdivisions were using tax relief to increase levies more than normally occurs.

The committee also reviewed revenue derived from home rule sales taxes and special assessments. The committee reviewed the history behind the home rule sales tax and the historical growth in local sales and use taxes between the years of 1996 and 2013. The data reflected a growth in local sales and use taxes from collections of $36,534,413 in 1996, to collection of $206,247,609 in 2013. The committee learned that from 2003 to 2012, special assessments imposed statewide increased by 59 percent, and on a statewide basis, about $1 in special assessments is collected for every $9 collected through property taxes.

State Funding to Political Subdivisions

The committee reviewed a comparison of appropriations and revenue allocations for the 2003-05 and 2013-15 bienniums. The comparison showed an increase of $2.74 billion, or 271 percent, in state appropriations and revenue allocations to political subdivisions over that time period. This is compared to an increase of about 39 percent in political subdivisions' property taxes and special taxes levied from 2003 to 2012. The Legislative Assembly has acted to control growth of the property tax burden. Appropriations by the state in 2009 marked the first time in many years state appropriations and revenues to political subdivisions increased at a faster rate than political subdivisions' property taxes and special taxes levied. For example, from 1994 to 2007, property taxes and special taxes levied by political subdivisions increased 95.9 percent while state appropriations and revenue allocations to political subdivisions increased by 83.6 percent.

The committee reviewed information on the total state assistance provided from oil tax revenue allocations, state aid distribution fund payments, highway tax distribution fund payments, and grants from the oil and gas impact grant fund to selected political subdivisions. The committee reviewed data regarding the total appropriations from state funds for major infrastructure and estimated state funding allocations to political subdivisions, including allocations for property tax relief. The data shows over $4 billion was provided in infrastructure and funding allocations during the 2013-15 biennium.

The committee reviewed 10 years of data regarding the amount of property tax collections statewide, state assistance to political subdivisions, and the total amount available to political subdivisions through a combination of property taxes and state assistance. Data provided for the 2013-15 biennium indicated a total of $5.415 billion available to political subdivisions through property tax collections and state assistance--up 33.3 percent from the total amounts available in the prior biennium. It is apparent that though the Legislative Assembly has continued to act to control the growth of property tax burdens, costs of local government continue to rise.

Testimony and Committee Deliberations

Political Subdivision Budgeting Process and Levies

The committee began its assessment on controlling the growth of property tax levies with a general review of how political subdivisions calculate budgetary needs and determine property tax levies. The committee received testimony from representatives of several political subdivisions regarding the budgeting process. The committee received testimony from a city representative detailing the municipal budget process and applicable timelines. Factors involved in developing a budget plan include evaluating current conditions, projecting available resources, and anticipating funding needs for ongoing programs. Information regarding a city's annual fiscal cycle, preliminary budget development, and hearings preceding the adoption of a city's budget were also reviewed. Concern was expressed by some city representatives regarding the timing in which cities receive valuation information from counties. It was indicated that valuation information is received the first week of August and budget hearings are held in mid-August to late August. A city representative expressed preference for receiving valuation information in June, rather than August, to coincide with a city's preliminary budget work.

The committee received testimony from county representatives regarding the county budgeting process. Information was presented on emergency services budget calculations, the county general fund revenue budget, and a comparison of the prior year's approved budget to the current year's requested budget. The committee was informed that the county commission has no authority over the amounts required for salaries for county social services employees as those salaries are set by the county social services board. The committee inquired on whether information showing estimated funds available included funds held in reserve or in investments. It was indicated by a county representative that information showing estimated county funds do include these amounts, but entities other than counties might not account for this information anywhere other than in individual audit reports. The committee expressed interest in requiring those entities reporting to the county to disclose amounts held in the bank or in reserve.

A committee member expressed the opinion that the starting point for a political subdivision's budget should be based on no increase in expenditures. Representatives from several political subdivisions provided testimony on reasons for fluctuations in budgets. A city representative provided testimony regarding the difficulties a city encounters when trying to maintain the same level of social services, without a corresponding increase in property taxes, when a city has experienced a decline in population. The committee expressed interest in receiving a description of inflationary factors such as increases in population, construction costs, and personnel costs that may have an effect on city budgets.

The committee received testimony from representatives of several cities regarding reasons for increased city budgets. The committee received testimony from a representative of the city of Williston regarding the inflationary effects caused by increased oil activity. Information was provided on the increased need for police, fire protection, and public works, as well as inflated costs for salaries and housing required to attract and retain city employees. A representative from the city of West Fargo expressed similar concerns regarding the additional budgetary demands that come with increases in population. Testimony was provided illustrating the effects rapid growth had in terms of the need for additional police protection, roads, and sewers. Testimony also indicated that debt service had become one of the largest budget categories due to the infrastructure demands created over the past decade.

The committee explored how much of the growth in taxable valuation was attributable to new property and how much was attributable to assessment increases on existing properties. The committee received testimony from a representative of the North Dakota League of Cities regarding the amount of growth occurring in cities over a 5,000 population statewide. Data indicated the combined increase in taxable valuations for these cities was approximately $90 million in 2012. Of that amount, roughly $50 million was attributable to increased valuation of preexisting property and the remaining $40 million was attributable to valuation of new property. Testimony indicated the addition of a large amount of new property to the tax rolls tends to reduce the mill rate but increase overall property tax collections. The committee received data showing the 2012 taxable valuation and mill levies for each city in the state. The committee also received information on taxable valuation, state and county mill rates, school district mill rates, park district mill rates, and mill rates for various other taxing entities for each year from 2008 through 2012. A representative of Ward County expressed concerns regarding set mill rates. Testimony indicated that levies at a set mill rate impose a rapid increase in tax dollars when increases in valuation occur. A preference was expressed for determining levies according to dollars needed rather than through a set mill rate.

The committee reviewed data published by the Tax Department illustrating the relative property tax imposition by political subdivisions over a 10-year period. The committee received information showing the levies available for each type of political subdivision ranked by the average number of mills in each category to illustrate the relative use of each type of available levy. Committee members considered whether benefits would be derived from consolidating levies. The committee received testimony on previous legislative efforts regarding county levy consolidation authority. Committee members expressed concern that counties may use the increased mills available through consolidation to increase taxes on county residents. Committee members discussed the possibility of eliminating those levies that are not currently being used by any political subdivisions.

Property Tax Task Force

The committee received testimony from the Governor regarding progress of the Governor's Property Tax Task Force on Property Tax Reform on the efforts of the task force to consolidate and simplify levy provisions. The committee learned the task force is composed of individuals with a broad range of property tax experience and is tasked with providing assistance to the legislature as it works to reform property taxes. The goal of the task force in reviewing levy provisions is to provide for a more transparent system to help taxpayers understand how much they are being assessed and the purposes for which revenues are being expended.

The task force undertook a review of 186 levy limitations and found many were adopted as one-at-a-time measures that could benefit from consolidation or repeal. In its review, the task force found 13 county mill levies that could be consolidated into one general operating levy, a consolidation which would force county commissioners to set priorities and not rely on each levy limitation. A review of county road taxes found four levies that could be consolidated into

one allowing for a base level authority for county roads. Needs exceeding the base level would require a vote of the electors for any additional mills.

The task force identified 17 different city levies that could be consolidated into one general levy. Cities found to be outside the range of most city levies are medium-sized cities that had voted in higher levies based on home rule charters, and these cities would be grandfathered in. Any supplemental mills would require voter approval. The task force also identified nine township levies that could be combined into one general operating levy of 18 mills with the ability to increase another 18 mills.

The task force identified county capital construction levies as another group of levies that could potentially be consolidated. The task force also considered whether special taxing authority is still needed. The task force studied rural fire districts, which can currently levy up to 13 mills with a petition of only 20 percent of electors. The task force also touched on the possibility of shifting social services costs to the state, but this has proved to be a very complex and challenging proposition which the task force would not recommend being undertaken in one biennium.

The task force was working on a bill draft to translate its ideas into legislation. The approach taken in the bill draft would allow current spending levels to be maintained, with any required reduction in excess mill levies being phased out over a period of time. All previous voter-enacted mill levies would remain in place for 10 years or for the voter-approved period of time, whichever is less, and future voter-approved levies would be limited to a maximum duration of 10 years. The bill is being drafted with the goal of providing more discipline in how political subdivisions approach their budgeting and spending process while also providing more flexibility in mill levies through the process of consolidation.

Levies by Unelected Boards and Commissions

The committee reviewed information on unelected governing bodies having authority to levy property taxes. The committee found numerous sections of law providing for levy of tax by the board of county commissioners or the city governing body upon the request of unelected boards or commissions. Many of these sections of law were written at different times by different drafters and were not consistently worded. The committee set a guiding principle that the actual imposition of a levy should be determined by an elected governing body.

The committee requested a bill draft to provide for the use of uniform terminology in provisions regarding levies requested by unelected governing bodies. The bill draft requires each unelected governing body to provide the necessary budget and finance information when submitting a levy request to the board of county commissioners or city governing body. The bill draft also clarifies that levy requests are subject to adjustment by the elected board of county commissioners or city governing body having the final authority to make the levy. The bill draft requires the county or city to hold a public hearing on any levy requested by an unelected governing body. The bill draft also contains provisions to encourage joint public hearings and deliberations for property tax levies proposed by taxing districts that are in one or more counties. The committee amended the effective date in the bill draft from 2015 to 2016 as it appeared it would not be feasible to apply the bill draft provisions for the 2015 tax year.

The committee received testimony from interested parties regarding the bill draft. A representative from the North Dakota Association of Counties informed the committee that rural ambulance districts, fire protection districts, and hospital districts are all created through a vote and then the electors vote to elect members of a governing board at the annual meeting of each district. The representative expressed the opinion that these governing bodies should not be subject to the same reporting requirements as unelected governing bodies as they are in fact elected. The committee also received testimony from various representatives of airport authorities expressing concerns regarding county or city control of an airport authority's budget. Testimony indicated that if cities or counties control airport levies, airport authorities would be in violation of federal grant assurances. Information was also provided on how an airport authority's ability to bond for projects could be negatively affected.

Concerns were also expressed by a representative of the city of Carrington regarding the date auditor's reports would be due. Submitting reports by the first day of February would likely prove difficult as most boards typically do not have their audits completed until the end of March.

After taking into consideration comments by interested parties, the committee revised the bill draft to eliminate its application to levying entities having elected boards or boards appointed by a county or city. The revised version of the bill draft also removed language regarding information that must be submitted by the entities requesting a levy from the county or city. Authority was added in sections pertaining to a county or cities general powers to allow the county or city auditor to request financial information from any entity submitting a levy request for consideration to the county or city. A representative from the North Dakota Auditors Association expressed support for the revised version of the bill draft. Representatives from the North Dakota Association of Counties and the North Dakota Township Officers Association also expressed a preference for the revised version of the bill draft.

Based on the committee's discussion regarding rural fire protection districts, the committee also reviewed a bill draft to address the manner in which rural fire protection districts increase their levy authority. Under current law, a rural fire protection district may increase its levy limit from 5 mills to 13 mills upon a petition signed by 20 percent of the electors in the district. The bill draft would allow for the same increase, but would require a majority vote by mail election ballot before the increase could be made. The committee modeled the mail ballot election requirements in the bill draft after those already in place for water districts.

Property Tax Statements

The committee reviewed the provisions of Senate Bill No. 2036 (2013) requiring the Tax Commissioner to prescribe the format of property tax statements. The committee received several updates from a representative of the Tax Department on developments in prescribing these forms. The Tax Department obtained and reviewed a sample of the tax statements used in each of the 53 counties. Considerable differences were seen from county to county regarding formatting. The committee expressed concerns that the variation in formatting has been a source of confusion for taxpayers, especially those having property located in more than one county.

Testimony provided by a representative of the Tax Department indicated that the department's review only pertained to ensuring the information required pursuant to Senate Bill No. 2036 (2013) was present on each statement. The required information included the true and full value of the property, the total mill levy applicable, three columns showing the property taxes levied in dollars for the taxable year to which the statement applied and the two preceding taxable years, and a line item entitled "legislative tax relief" identifying the dollar amount of property tax savings realized by the taxpayer.

The committee reviewed samples of existing property tax statements and examples of potential formats for property tax statements. The Tax Department formed a working group composed of interested parties to discuss administrative concerns, formatting ideas, and potential costs associated with creating uniform statements. Testimony from a Tax Department representative indicated that it may not be feasible to require identical statements for every county because different software is used among counties, but the group would work toward creating a "standard" statement. A representative of the Tax Department expressed the opinion that any additional requirements for uniformity among property tax statements would be better addressed administratively than through legislation. The committee reviewed the format that will be used for 2014 tax statements and thanked the Tax Department for its work on the project.

Notice of Increased Assessments

The committee reviewed the portions of Senate Bill No. 2036 (2013) relating to notice requirements. The bill required the Tax Commissioner to prescribe the form of notices assessors are required to send to property owners if the assessed value of a property has increased by $3,000 or more and 10 percent or more over the prior year's assessment. The bill also required that individuals receiving notices of increased assessments also receive a mailed notice informing them of the taxing districts' budget hearing if the district is considering a property tax increase in a greater number of mills than a zero increase number of mills. The committee received testimony regarding compliance with the two notice requirements and concerns surrounding the costs associated with providing notices. The committee also reviewed options for sending notices, including the ability to send notices via email.

A representative of the Tax Department indicated that the department had received a number of questions and concerns regarding the requirements surrounding notice of increased assessments as well as the volume of notices required to be sent out. It was discovered that some notices of increase were not being sent in counties relying on a 1983 Attorney General opinion, which provided that notice of an assessment increase was not required to be sent if a county board of equalization raises the assessment for an entire class of property 15 percent or more over the prior assessment. The committee considered a bill draft to address situations in which a board of equalization is the source of an order for an increase in the valuation of property that would place the total valuation increase for the property above the 10 percent increase threshold currently requiring notice. The bill draft also included a separate provision requiring notice be sent if a township, city, or county board of equalization or order of the State Board of Equalization results in a property valuation increase of the same threshold that applies to notice from the assessor.

The committee received written testimony from a representative of the Dickey County Office of Tax Equalization expressing concerns regarding the timing surrounding notifications. It was suggested that the if the intent of the bill draft was to notify property owners prior to an increase of at least 10 percent and $3,000, the notice be sent at least 5 days before the meeting of the governing body approving the increase. If the intent was to notify property owners after the fact, it was suggested that various revisions be made to conflicting language contained in sections relating to increases made by township, city, and county boards of equalization. Lastly, it was suggested that the section regarding notices be moved to a different location in the Century Code where other local and county board of equalization publication requirements are currently placed. Apart from the suggested revisions, the Dickey County representative expressed agreement with the overall intent behind the bill draft.

The committee considered a revised version of the bill draft taking into account the suggestions provided. The revised bill draft contained uniform provisions for city, township, and county boards of equalization and clarified that at any point when a property's assessment is increased by 10 percent and $3,000 over the prior year's assessment, the entity making the increase must notify the owner. If the local board of equalization is considering an increase that would make the assessment 15 percent or more above the previous year's assessment, the board must provide the owner reasonable advance notice and opportunity to appear. The committee received testimony from a representative of the North Dakota Association of Counties indicating that while the provisions in the revised draft may result in increased costs, the extra cost may be worthwhile if the result is better information being provided to property owners.

Notice of Budget Hearings

The committee also reviewed the notices of budget hearings governing bodies are required to send to those individuals having received a notice of increased assessment if the governing body is considering imposing a property tax levy exceeding a zero increase in the number of mills over that levied in the prior year. The committee found a survey of counties' experiences in sending notices significant in determining whether the provision of notices resulted in increased taxpayer attendance and participating in the budgeting process. The committee received testimony summarizing the responses to questions posed to various county officials. The questions posed related to the costs of complying with notice requirements, any resulting increase in public awareness or attendance at budget hearings, and any increase in dialog regarding levy and budget issues between county commissioners and taxpayers.

Testimony indicated that of the 35 counties comprising the majority of the state's population, 13 counties had preliminary budget estimates in an amount triggering the requirement that individual notices be sent to those taxpayers who had received a notice of increased assessment. A total of 20,607 notices were mailed out from these 13 counties at a cost of $14,671. An average of $411 was also spent per county to notice the budget meeting in the newspaper. Of the counties sending individual notices, some reported a measurable amount of interest being generated and a greater number of citizens in attendance at budget hearings due to the notices.

Of the remaining counties whose preliminary budget estimates did not trigger the requirement for individual notices, an average of $191 was spent per county to notice the budget meeting in the newspaper. Public attendance at the budget meetings in these counties was reported to be extremely low. The overall response of those surveyed indicated that while mailing of notices may have increased attendance at budget meetings, little meaningful dialog was produced, and in some cases, public attendance actually resulted in additional requests for services which would have the effect of increasing property taxes.

The committee also received testimony summarizing comments provided by representatives of the 20 largest cities on their experiences with sending notices of budget hearings. Of the 20 cities surveyed, 6 sent out notices to those taxpayers having received a notice of increased assessment. The main concerns expressed by cities in sending the notices were the number of letters that came back as undeliverable due to changes in ownership; the amount of time it took staff to send notices; confusion on the part of taxpayers as to what the notices meant; and the fact that some taxpayers, such as developers, were receiving individual notices for each of their many properties. Some city representatives indicated the notices had little effect on increased taxpayer participation or dialog in the levy and budgeting process while others felt the process resulted in useful information being provided to taxpayers. A representative of the Bismarck Parks and Recreation District expressed the opinion that the process had been educational and a much greater level of attendance and dialog occurred at the budget meeting as a result of sending notices. A county representative indicated that county officials are interested in helping citizens understand how property taxes are determined and where tax dollars are being expended so citizens can provide better input on the services they wish to keep and those services they feel could be eliminated.

The committee considered a bill draft to provide for elimination of newspaper publication of notice of budget hearings by those taxing districts considering a levy in a greater number of mills than a zero increase number of mills. In place of a published notice, the bill draft requires written notice be provided to every property owner in a taxing district contemplating a levy of greater than zero increase in the number of mills. Notice may be provided by personal delivery, mail, or electronic mail if the owner consents to receive notice in that format. The bill draft also allows for consolidated notices to be provided to individuals or entities owning more than one parcel of property in the taxing district. Testimony provided by a representative of the North Dakota Association of Counties indicated that the change in notice requirements would likely result in substantial costs.

Funding for Social Services

The committee received information from a representative of the North Dakota Association of Counties regarding county revenues and expenditures for social services and information on the number of counties either favoring or opposing state assumption of the funding and operation of social services at the county level. The committee learned that based on state fiscal year 2013, counties incurred an overall increase in expenditures for social services of 7.1 percent and an overall decrease in reimbursements coming from the state of 3.1 percent. This resulted in over a

12 percent increase in net county costs to be funded from property taxes between fiscal year 2012 and 2013 amounting to an increased costs to counties of $5,127,516. The committee learned that of the $50 million counties expended for social services in 2013, $47.5 million was derived from property tax levies and $2.5 million from other county revenue sources.

The committee learned counties have four social service levies that may be used to generate revenue. In 2014 the counties anticipate spending nearly $58 million on social services. Shifting the funding responsibility for county social services to the state level would result in the elimination of all four levies and over a $50 million reduction in property taxes. The committee was informed county officials were supportive of shifting funding for social services to a source other than property taxes, but have concerns about counties' continued ability to swiftly access time-dependent services, such as emergency foster care placements and elderly assistance, if operational functions were also shifted to the state. County officials suggested having any transfer of funding or operational responsibilities occur in phases to allow for proper planning.

The committee received testimony from a representative of the Department of Human Services regarding House Bill No. 1233 (2013), which would have provided for a transfer of certain social services programs and costs from the counties to the state. The $102 million listed in the fiscal note for the bill addressed the program, administrative, and one-time restructuring costs that would be incurred if such a shift would have been made. The majority of that cost--roughly $81 million--would be for salaries and operating costs as county employees would have become state employees. The committee learned that over time, efficiencies may be realized by shifting the administration and funding of social services to the state level. No significant reduction in services was anticipated to result from such a shift as the majority of social service programs consist of state and federal programs. Only a small portion of social service costs are related to social services that are not attached to any state or federal programs, such as costs for indigent burials or in-home care. The committee felt consideration should be given to tax policy changes that would be necessary if the state took over county social services.

The committee expressed concerns regarding the cost shifting that occurs in exempting nonprofit entities from property tax. The committee showed interest in developing a bill draft that would address the value of the benefit nonprofit entities receive through the provision of services like fire and police protection. The committee reviewed House Bill No. 1380, which failed to pass during the 2013 legislative session, which would have provided for the establishment of special assessment districts containing certain properties not subject to tax. The bill draft would have allowed for special assessments to be levied against exempt properties for an equitable share of the cost of safety and emergency services provided by the city. The committee considered a bill draft to provide for the imposition of special assessments by cities for tax-exempt property of fee-based nonprofit organizations. The committee was informed of Attorney General opinions and Supreme Court decisions that implied the property tax exemption provided by the Constitution of North Dakota prohibits imposition of an alternative form of tax or fee on exempt properties. Though the opinions did not specifically state that a special assessment approach would fail to be upheld, constitutional objections could arise.

Education Funding

The committee received testimony from a representative of the Department of Public Instruction regarding the 2013 legislative changes to the education funding formula. The formula utilizes average daily membership of students for the prior school year to determine what it should cost to educate students to a state standard on a per student basis. The formula is funded by both state and local sources with property tax relief being taken into consideration. Roughly 20 percent of the necessary funding is derived from local sources with the remainder being funded by state sources. The committee received information on the anticipated costs for funding K-12 education for the 2015-17 biennium. Taking into account an anticipated gain of 10,000 additional students, funding for the 2015-17 biennium will require a 12 percent increase on the $1.7 billion to $1.8 billion appropriated for the 2013-15 biennium. A 12 percent increase would amount to roughly $275 million dollars. Of the $275 million figure, roughly $75 million would be derived from local sources, due to increases in valuations, and the remaining $200 million would be derived from state sources.

The committee received information on school district levy authority and school district general fund and ending balance information for the years 1996 through 2013. The committee reviewed the three levies under the control of the board of a school district, including a tax not exceeding the amount in dollars the school district levied for the prior year, plus 12 percent, up to a levy of 70 mills on the taxable valuation of the district; a levy of up to 12 mills for miscellaneous purposes; and a levy of 3 mills for deposit into a special reserve fund. Any number of mills over the 85 mills authorized to be levied through school board authority must be approved through a vote of the people.

Members of the committee expressed concern as to whether school districts had an incentive to grab the maximum property tax levy available. The committee received testimony that some districts will try to maintain a levy at or near 60 mills and other districts will be increasing their levies. Should a school district elect to levy less than 60 mills, less revenue would be received as the funding formula operates under the assumption that a school district will levy the full

60 mills on the taxable valuation of the district. A suggestion was received by a school district representative that consideration be given to allowing an increase of more than 12 percent from the previous year for districts levying fewer than 60 mills.

Members of the committee also expressed concern regarding how mill levies would function in some of the western areas of the state where taxable valuation has increased dramatically. The committee received testimony indicating that, due to the restriction on a school district's ability to levy more than 12 percent over what they levied in dollars for the prior year, a district experiencing a large growth in taxable valuation would need to make the appropriate decrease to its mill levy to remain below the maximum thresholds.

Oil and Gas Gross Production Tax Allocations

The committee reviewed information provided by a representative of the Office of Management and Budget illustrating the distribution of oil tax revenues among state funds for the 2013-15 biennium. The report indicated that revenues for the first three months of the biennium were $89 million more than originally forecasted for that period.

The committee received testimony from a representative of the Tax Department regarding the effect of 2013 House Bill No. 1358 on the allocation formula for oil and gas gross production tax revenues. The report provided data on estimated distributions to counties, cities, schools, and townships based on the official forecast of $75 per barrel average price for oil and 850,000 barrels per day of production. The committee also received an updated version of this report based on more current price and production amounts. The report indicated that oil and gas tax allocations were significantly more than estimated at the end of the 2013 legislative session.

The committee received a report from a representative of the Tax Department summarizing information contained in reports from those counties receiving allocations of oil and gas gross production revenue regarding the amount of tax revenue received, expended, and on hand. The report is required to be presented within 120 days after the end of each fiscal year pursuant to Section 57-51-15. The report indicated that of the counties receiving oil and gas gross production tax revenue, a total of $35,910,293 had been received, $35,324,804 had been expended, and $585,489 remained unallocated.

The committee received a report from a representative of Job Service North Dakota, pursuant to the directive contained in House Bill No. 1358, requiring Job Service North Dakota to upgrade collection and use of employment date to correctly identify all employees who should be included for statistical purposes in oil and gas-related employment, including employees of refineries, gas plants, and oil and gas transportation services. The report indicated that of the 359,415 jobs in North Dakota in 2013, 55,137, or 15.3 percent, are attributable to oil and gas-related employment. Jobs not critical for production of a well, such as relating lodging or restaurant jobs, were not included in the data.

The committee received information from a representative of the State Treasurer illustrating the effect on oil production tax allocations if current employment data were replaced with the data provided in Job Service's revised oil industry employment report. The information indicated that if employment data taking into account all oil and gas-related employment were used, rather than data from just mining employment, six additional hub cities would be created. Under the current data, there are only three cities with a population of over 12,500 and covered mining employment of greater than 1 percent. The report indicated that allocations to the top three hub cities would increase significantly and additional allocations to the resulting nine hub cities, and their corresponding school districts, would result in a decrease in allocations to the general fund.

State-Paid Property Tax Relief

The committee reviewed Senate Bill No. 2036 (2013), which created a new form of property tax relief through a state-paid credit against property taxes and mobile home taxes in the amount of 12 percent of the taxes levied by all taxing districts against the property. Estimates indicate that $200 million in property tax relief will be provided during the 2013-15 biennium as a result of the credit. The committee received information from a representative of the Tax Department regarding the estimated cost of extending the 12 percent state-paid property tax credit for the 2015-17 biennium. The information indicated the cost to extend the credit for this period would be approximately $215 million to $230 million. The cost to extend the credit for the same period, if the rate were to increase from 12 percent to 25 percent, would be approximately $450 million to $500 million.

The committee also received information on the total amount raised from local property taxes statewide and the total dollar value of state-paid property tax relief for the current biennium. The total of the two figures amounted to $2.5 billion. Of that total, $860 million, or 35 percent, represented the total dollar value of state-paid property tax relief. The committee also reviewed information on the cumulative effect of property tax relief efforts arising out of the 2009 through 2013 legislative sessions. Relief provided through these efforts resulted in an approximate reduction in property tax liabilities of 35 to 40 percent. Some taxpayers may have received relief to a lesser degree than the

averages displayed depending on changes in the value of a taxpayer's property and changes to the local mill rate where the property was located. A combination of a less significant drop in mills with a greater increase in valuation could result in a lower overall percentage decrease in a taxpayer's property tax liability.

The committee received testimony from a representative of the North Dakota Association of Rural Electric Cooperatives regarding the lack of application of the 12 percent credit to these groups. The information provided indicated that rural electric cooperatives did not benefit from the 12 percent state-paid property tax credit as the credit only applies to real property. Rural electric cooperatives pay a large amount of property-related taxes, mainly in the form of in lieu property taxes on distribution, transmission, and generation facilities that are not eligible for the 12 percent state-paid credit. In the alternative, competing investor-owned utilities pay assessed property taxes, which are eligible for the 12 percent state-paid property tax credit. It was argued that rural electric cooperatives were not placed on an equal playing field with investor owned utilities in terms of taxation. Members of the committee acknowledged that rural electric cooperatives had missed out on property tax relief in the form of the 12 percent state-paid property tax credit. Committee members noted that the topic of fairness in tax treatment between rural electric cooperatives and investor-owned utilities would likely be raised during the course of the 2015 legislative session and interested parties would benefit from having data available to present to legislators illustrating any potential tax disparities.

The committee discussed the sunset provision that applies to the 12 percent state-paid property tax credit. The committee indicated there was a strong probability that an extension of the credit would be considered over the course of the 2015 legislation session. In order to spur that discussion, the committee considered a bill draft to extend the 12 percent state-paid property tax credit for the 2015-17 biennium. The bill contained an appropriation for the estimated $230 million cost associated with extending the credit for this period. A sunset clause was not included in the bill draft.

The committee also reviewed property tax relief that had been provided through 2013 legislative expansions to the homestead credit and disabled veterans tax credit. The committee received information from a representative of the Tax Department on outreach efforts that had been conducted to inform citizens of the credits. Data provided to the committee indicated that the number of qualifying applicants for the homestead tax credit increased from 4,265 in 2012 to 6,740 in 2013, representing a 58 percent increase in individuals qualifying for the credit. For the years of 2011 and 2012 property taxes for qualifying individuals were reduced by a combined total of $3.2 million due to the benefits received under the homestead credit. A representative from the city of Grand Forks expressed appreciation to the legislature for expanding the homestead and disabled veterans tax credits and commented that providing notice of the credit has gone very well and it was anticipated that more individuals would be claiming the credit in Grand Forks.

Recommendations

The committee recommends Senate Bill No. 2056 to provide for uniform language in provisions pertaining to levies requested by unelected governing bodies. The bill clarifies that levies requested by unelected governing bodies are subject to adjustment by the approving entity. The bill also provides authority for boards of county commissioners and city governing bodies to request financial information from unelected governing bodies requesting approval of property tax levies.

The committee recommends House Bill No. 1056 to require rural fire districts to receive a majority vote by mail ballot election before increasing its levy authority.

The committee recommends House Bill No. 1057 to provide for notice to property owners if the assessment on the owner's property increased by 10 percent and $3,000 from the assessment in the prior year. The notice requirements in the bill apply to city, township, and county boards of equalization and provide that the entity making the increase is the entity that must notify the owner. The bill also requires local boards of equalization provide reasonable advance notice to a property owner and opportunity for that property owner to appear if the board is considering increasing the assessment on the property by 15 percent or more over the prior year's assessment.

The committee recommends House Bill No. 1058 to provide for notice of the time and place for public budget hearings to each owner of property in a political subdivision if the political subdivision is considering a property tax levy increase in a greater number of mills than a zero increase number of mills. The bill also allows for consolidated notices to be sent to property owners owning more than one parcel of property in the taxing district. The bill eliminates the previous requirement for newspaper publication of budget hearings.

The committee recommends House Bill No. 1059 to extend the 12 percent state-paid property tax credit. The bill appropriates $230 million for allocation of state-paid property credit funds for the 2015-17 biennium. This bill was also reviewed and recommended by the Advisory Commission on Intergovernmental Relations.

STATE ECONOMIC DEVELOPMENT TAX INCENTIVES AND EXEMPTIONS REVIEW STUDY

The Chairman of the Legislative Management directed the committee to study state economic development tax exemptions, including consideration of whether a regular review process should be established for state economic development tax incentives to ensure regular consideration of whether incentives are still serving the intended purpose for which they were created.

Background

Individual Income Tax Credits and Exemptions

The committee reviewed the number of claimants and amounts claimed for various individual income tax credits and exemptions during the 2012 tax year. The credits and exemptions reviewed by the committee were those having a primary goal of promoting economic development and included the research expense credit; seed capital investment credit; renaissance zone credits, including the single-family residence credit, historic property renovation credit, business purchase or expansion credit, renaissance fund organization investment credit, and nonparticipating property owner credit; agricultural commodity processing facility investment credit; biodiesel fuel blending credit for both wholesalers and retailers; internship program credit; microbusiness credit; angel fund investment credit and angel fund investment credit purchased from another taxpayer; workforce recruitment credit; manufacturing automation equipment credit; new or expanding business exemption; and the renaissance zone business exemption. Based on statistical information provided by the Tax Department, the committee found the amount claimed or deducted for these credits during the 2012 tax year amounted to $11,392,146.

Corporate Income Tax Credits and Exemptions

The committee also reviewed the number of claimants and amounts claimed for corporate income tax credits and exemptions during the 2012 tax year. The credits and exemptions reviewed by the committee included the wage and salary credit; research expense credit; seed capital investment credit; certified nonprofit development corporation credit; renaissance zone credits, including the historic property renovation credit, renaissance fund organization investment credit, and nonparticipating property owner credit; agricultural commodity processing facility investment credit; facility construction or retrofit credit for biodiesel fuel production; biodiesel fuel blending credit for both wholesalers and retailers; internship program credit; microbusiness credit; angel fund investment credit; workforce recruitment credit; facility construction or retrofit credit for soybean and canola crushing; manufacturing automation equipment credit; new or expanding business exemption; and renaissance zone business exemption. Based on statistical information provided by the Tax Department, the committee found the amount claimed or deducted for these credits during the 2012 tax year amounted to $4,964,289.

Property Tax Exemptions

The committee reviewed the policy on property tax exemptions. The committee reviewed court decisions and Attorney General opinions that establish the taxability of the value of a possessory interest in government-owned real property held by a nonexempt person if no exemption for the lessee is provided by law. The committee reviewed Section 57-02-26, providing that leased property belonging to the United States or to the state or a political subdivision is taxable to the lessee, and Section 57-24-31, providing that the tax imposed on a leasehold interest is collectable as a personal charge against the nonexempt lessee of the possessory interest.

The committee also reviewed the two exceptions to the general rule contained in Section 57-02-08 relating to the exemptions from property tax of a lessee's or owner's otherwise taxable interest in building space at a state institution of higher education. Section 57-02-08(16) provides that property owned or acquired by a corporation not organized for profit for the purpose of promoting athletic and educational uses and needs at any state educational institution is exempt from taxation. Section 57-02-08(34) provides that a building located on state-owned land and used at least in part for academic or research purposes by students and faculty of a state institution of higher education is exempt from taxation. The committee learned that neither exemption is subject to approval of the local governing body and neither exemption contains a limit on the duration for which the lessee may use the exemption.

Miscellaneous Credits and Exemptions

The committee reviewed additional miscellaneous credits and incentives, including the coal severance tax exemption for coal used in agricultural processing facilities or for beneficiation for that purpose, coal conversion tax exemption of the state's 85 percent share of the tax for a new coal conversion facility, fuel tax refunds to agricultural users reduced and the amount transferred to the ethanol production fund, oil extraction tax exemption and rate reduction incentives currently triggered off that will become effective if oil prices drop to trigger levels, oil extraction tax rate reductions for new wells drilled outside the Bakken and Three Forks Formations, sales tax exemption for manufacturing and recycling equipment, and income tax new jobs credit from withholding. The committee did not review the fiscal effect for any given year for these specified credits or exemptions.

Testimony and Committee Deliberations

Evaluating State Tax Incentives

The committee received testimony from a representative of The Pew Charitable Trusts regarding methods the organization had employed in other states when evaluating tax incentive provisions. The committee reviewed the four main principles the organization relied on in evaluating incentives.

1. All tax incentives should be reviewed regularly according to a strategic schedule to determine if they are still meeting their intended purposes;
2. Evaluation of incentives should be based on measureable goals;
3. The costs and benefits of incentives should be measured through rigorous evaluation; and
4. Evidence should be used to inform policy choices.

Information was also received regarding the organization's experiences with working with other states in evaluating tax incentives.

The committee arranged a panel discussion comprised of representatives from the City of Bismarck, The Pew Charitable Trusts, the Economic Development Association of North Dakota, and the Department of Commerce. A member of the panel suggested three items be considered when evaluating incentives. The first item concerns transparency. Information should be available to the public regarding who is receiving incentives. The second item involves accountability. Recipients of incentives should account for any results that were promised when the incentive was originally sought. The third item involves measuring and evaluating the effectiveness of the incentives which can sometimes be difficult due to the confidential nature of many tax documents. It was suggested that consideration be given to making incentives contingent upon the applicant waiving confidentiality to the extent necessary for evaluating the incentive for which the applicant is applying. Committee members agreed that existing confidentiality provisions could be a barrier to properly evaluating the effectiveness of some incentives.

The committee considered a bill draft to provide for the sharing of confidential information by Job Service North Dakota and the Tax Department for purposes of providing information to the Department of Commerce for evaluating tax incentives. After taking into consideration concerns expressed by representatives of the Tax Department and Job Service North Dakota, the bill draft was revised to provide for restrictions on any further disclosure of confidential information by the Department of Commerce.

The committee also took into consideration the benefit of business incentives in light of North Dakota's changing economy. A committee member expressed the opinion that many incentives were created at a time when the state was seeking to create jobs. This need may not be as prevalent in light of North Dakota's current economic climate. The committee received information on the various tax incentives available for businesses. The committee thought it would be beneficial to evaluate how successful these incentives were at attracting new businesses to the state.

The committee reviewed the angel fund investment tax credit program that was developed for the purpose of attracting investments and encouraging small business development. The committee received a report from a representative of the Tax Department, pursuant to Section 2 of Session Law Chapter 461 (2011), 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. The report indicated that from 2007-10, angel fund investments were just shy of $4 million. After 2010, investments had risen to $27 million and tax credits earned had exceeded $10 million. The committee was informed the law does not mandate that angel funds invest in North Dakota businesses.

The committee also received a report from a representative of the Tax Department, pursuant to Section 5 of Session Law Chapter 562 (2009), 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. The report detailed the total number of exempt tons, taxable tons, and severed tons. The report indicated that only a very small percentage, about one-half of 1 percent, of coal mined in the state qualified for the beneficiated coal exemption.

The committee received testimony from a member of the Grand Forks City Council raising concerns about property tax exemptions granted to private businesses operating in incubator status in facilities on state land. The main concerns expressed were the lack of local control over the state-granted exemptions and the duration for which these businesses could continue to be exempt from property tax. The committee considered a bill draft that would have limited a tax exemption for leasehold interests in certain buildings on university campuses to three taxable years unless the governing body of the city or county chose to extend the exemption for an additional three taxable years.

A representative of NDSU Research and Technology Park testified in opposition of the bill draft and was of the opinion that the law effective as it is. Testimony indicated that the average length of time a business remained in an incubator facility was only three to four years. A representative of a Bismarck Business Incubator also expressed a preference to leave the law as it currently stands. Testimony also indicated that the Grand Forks legislative committee was also opposed to the bill draft and preferred the incentive simply be recommended for further study.

The committee considered an alternate version of the bill draft that would have linked the duration of a tenant's occupation in an incubator facility to the success of the tenant's business. The bill draft linked the expiration of the tenant's property tax exemption to the volume of sales achieved by the tenant, rather than on the duration the tenant occupied the facility. After receiving additional information regarding the relatively small size of many businesses located in incubator facilities, committee members determined linking duration of occupancy to volume of sales may not produce the limiting effect that was intended. The committee determined the topic may be better addressed within the context of a broader economic incentives review than in a stand-alone bill draft.

A representative of the Economic Development Association of North Dakota testified in support of periodic reviews of incentives. However, review of incentives through the use of sunsetting provisions was not favored. A member of the committee recommended reviewing those incentives that are no longer in use or not accomplishing their intended purpose for possible elimination. The committee agreed that improved methods should be developed for evaluation of incentives. The committee was also in agreement that some programs may need to be tailored to fit different areas of the state. Committee members suggested evaluating the benefit received by the entire community and whether incentives were actually encouraging individuals to do something they would not otherwise do.

The committee considered a bill draft to provide for regular review and evaluation of state economic development tax incentives. The bill draft requires the Legislative Management to designate an interim committee each interim to conduct reviews of those incentives specifically listed in the bill. The interim committee would designate the incentives to be reviewed during the current interim and establish a schedule to review the remaining incentives, assuring each incentive was reviewed within a six-year cycle. The bill draft provides a list of considerations the interim committee must apply when reviewing each incentive. The interim committee could recommend legislation regarding incentives, including legislation to add additional incentives to the list to be reviewed and to allow for access to better information for the purposes of evaluating incentives.

Recommendations

The committee recommends House Bill No. 1060 to provide for the sharing of confidential information with the Department of Commerce by Job Service North Dakota and the Tax Department for purposes of providing information to the Department of Commerce for evaluating tax incentives. The bill provides for safeguards in restricting the use and disclosure of that information by the Department of Commerce.

The committee recommends Senate Bill No. 2057 to provide for regular review and evaluation of state economic development tax incentives. The bill provides for review of each of the selected incentives every six years by an interim committee designated by the Legislative Management. The bill also provides for specific factors to be taken into consideration when reviewing incentives and for committee authority to recommend legislation regarding incentives.

LOCAL ECONOMIC DEVELOPMENT TAX INCENTIVES AND EXEMPTIONS STUDY

Section 2 of Senate Bill No. 2314 (2013) directed the committee to study methods to assure that an accurate and reliable means is developed to measure effectiveness and accountability of property tax exemptions and other economic development incentives granted by cities and counties and to determine whether other taxpayers in the city or county ultimately derive a measurable benefit from granting of the incentives.

Background

In conducting its study, the committee reviewed various tax exemptions cities and counties have discretionary authority to provide, including property tax exemptions for new or expanding businesses, early childhood services property, improvements to property, pollution abatement improvements, new single-family residential or townhouse or condominium property, builder-owned property, renaissance zone property, and tax increment financing (TIF) district property.

Business Exemptions

In 1969 the Legislative Assembly created Chapter 40-57.1 to provide cities, for property inside city limits, and counties, for property outside city limits, an economic development tool. The primary economic development tool in Chapter 40-57.1 is authority of cities or counties to grant partial or complete property tax exemptions or the option to make payments in lieu of taxes for a limited period of time after negotiation with a potential project operator. The chapter also allows a project to receive an exemption from state income taxes for up to five years if approved by the State Board of Equalization.

After negotiation with a potential project operator, a city or county may grant a partial or complete property tax exemption for buildings, structures, fixtures, and improvements for up to five years from the date of commencement of project operations. The maximum length of a property tax exemption may be extended to 10 years if the project produces or manufactures a product from agricultural commodities. The option to make payments in lieu of taxes may be extended through the 20th year from the date of commencement of the project.

The property tax exemption or option to make payments in lieu of taxes is available for any revenue-producing enterprise. The income tax exemption available under Chapter 40-57.1 is limited to a primary sector business or a tourism business.

Business exemptions are also provided under Section 57-02-08(36), which allows the governing body of the city, for property within city limits, or of the county, for property outside city limits, to grant a property tax exemption for the portion of a building used primarily to provide early childhood services by a licensed provider or used primarily as an adult day care center. The exemption is not available for property used as a residence.

Improvement Exemptions

In 1973 the Legislative Assembly created Chapter 57-02.2 to provide cities and counties discretionary authority to allow property tax exemptions for improvements to commercial and residential buildings and structures. The exemption is allowed if the city, for property within city limits, or the county, for property outside city limits, has adopted a resolution allowing the exemption. The duration of exemptions for improvements is limited to five years and only applies to residential property that is at least 25 years old.

Improvement exemptions are also provided in Section 57-02-08(37), which allows the governing body of the city, for property within city limits, or the governing board of the county, for property outside city limits, to grant a pollution abatement improvement property tax exemption to abate emissions of pollution for part of an agricultural or industrial facility required to comply with local, state, or federal environmental quality laws, rules, regulations, or standards.

Residential Property Exemptions

A residential exemption is provided in Section 57-02-08(35), which allows the governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, to approve by resolution an exemption for up to $150,000 of the true and full value of new single-family and condominium and townhouse residential property for up to two taxable years after the taxable year in which construction is completed and the residence is owned and occupied for the first time.

Another exemption is provided in Section 57-02-08(42), which allows the governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, to provide an exemption by resolution for new single-family residential property for the taxable year in which construction began and the next two taxable years, if the property remains owned by the builder, remains unoccupied, and special assessments and taxes on the property are not delinquent. A builder is limited to exemption for no more than 10 properties under this subsection in a taxable year within each jurisdiction that has approved the exemption.

Renaissance Zones

A city may apply under Section 40-63-02 for Department of Commerce Division of Community Services approval designating a portion of the city as a renaissance zone. Under Section 40-63-03, the zone approval application must show all of the following criteria:

1. The property must all be within the boundaries of the city.
2. The city must propose a development plan.
3. The renaissance zone may not be more than 23 square blocks, but may be expanded up to 38 blocks at a rate of one additional block for each 5,000 population beginning at a population level of 10,000.
4. All blocks in the zone must be contiguous, except a single noncontiguous area not exceeding three square blocks may be included.
5. Proposed land usage for zoned property must include both commercial and residential property.
6. The application must include the proposed duration of renaissance zone status, not exceeding 15 years. The Division of Community Services may extend the duration of renaissance zone status in increments of up to five years.

The primary incentives for property owners or purchasers of renaissance zone property are income and property tax exemptions. A city may grant a partial or complete property tax exemption for single-family residential property, exclusive of the land, if the property was purchased or rehabilitated by an individual as a primary place of residence as

a zone project. A city may also grant a partial or complete property tax exemption on buildings, structures, fixtures, and improvements purchased or rehabilitated as a zone project for any business or investment purpose for up to five years following the date of purchase or completion of rehabilitation.

Tax Increment Financing Districts

North Dakota law on TIF was first enacted in 1973 and is contained in Chapter 40-58, which is the chapter on urban renewal. Section 40-58-20 requires approval of a development or renewal plan for a development or renewal area. Under Section 40-58-01.1, "development or renewal area" is defined as "industrial or commercial property, a slum or blighted area, or a combination of these properties or areas that the local governing body designates as appropriate for a development or renewal project." Section 40-58-01.1 also defines "blighted area" as an area that "substantially impairs or arrests the sound growth of a municipality" due to various factors and "is a menace to the public health, safety, morals, or welfare in its present condition and use." Whether these conditions exist in an area appears to be a question of fact that must be answered by the city governing body.

Creation of a TIF district "freezes" property valuations in that district for purposes of taxation by any political subdivision except the city. City general property tax levies apply only against "frozen" valuations of TIF district properties, and only the city's TIF district special fund levy applies against the incremental valuation of TIF district properties. A pool of money from existing funds or issuance of bonds is created to finance improvements within the TIF district. As property valuation from development within the TIF district increases, the amount of valuation exceeding the "frozen" valuation is subject to taxation only by the city for TIF district purposes, and the tax revenues from this valuation are segregated in a special fund to repay the bonds or other financing for the TIF project. Other taxing districts, such as a school district, continue to collect property taxes on property in the TIF district, but only up to the amount of the "frozen" valuation of the property.

As an alternative to sale of bonds for a TIF district, the city may grant a total or partial property tax exemption for the project to provide assistance to a project developer. The property tax exemption is limited to the tax increment value of the property and may not extend for more than 15 years.

Testimony and Committee Deliberations

Effectiveness of Property Tax Exemptions

Committee members acknowledged that there seems to be mixed public opinion on whether property tax exemptions are appropriate. Some individuals believe targeted exemptions are unfair and that all property taxes should be reduced or eliminated. Other individuals, especially those from smaller communities, may find incentives that attract business and increase employment opportunities very appealing. Committee members agreed that in recent years there has been increased interest in property tax exemptions and the cost to other taxpayers. Yet, little or no information seems to be available on the effect property tax exemptions have on other taxpayers. The committee expressed interest in the current resources available to evaluate local economic development incentives and determine the types of benefits that may be realized by the communities that offer incentives.

The committee received an annual report from a representative of the Department of Commerce, pursuant to Section 54-60.1-07, relating to the business incentive accountability law. The report provided a compilation and summary of the reports of state agencies that awarded business incentives for the previous calendar year. The report indicated that for the period 2009 through 2013 there were 581 business incentive agreements entered into totaling just under $95 million in incentives. Data provided in the report indicated that about 46 percent of projects were successful in meeting job creation goals in the first two years, another 46 percent were successful in meeting job creation goals in the third year, and the remaining 7 percent met job creations goals after year three.

The committee also received an annual report from the Division of Community Services, pursuant to Section 40-63-03, on renaissance zone progress and an annual report, pursuant to Section 40-63-03(10), compiling reports from cities that have a renaissance zone included in a tax increment financing district. The report indicated that 1,319 projects had been approved since the inception of the renaissance zone program. Of those projects approved, 1,073 had been completed. The committee received testimony indicating that use of renaissance zones had been successful in reviving and developing downtown areas in cities, such as Fargo and Minot. The committee received testimony regarding the status of the Bismarck renaissance zone. Data was provided indicating that property having a beginning value of approximately $14.7 million had now increased to a market value of approximately $32.1 million in Bismarck's renaissance zone. This data supported the opinion of individuals testifying in favor of renaissance zones that renaissance zones improved the community and provided an enhanced tax base going forward.

It appeared that economic development incentives work best when tailored to meet local conditions and needs. Much of the responsibility falls to the granting entity to determine if an incentive will benefit the entire community. Allowing local governments to set their own goals for incentives is one of the most practical approaches because it can

be difficult to track the exact benefits or burdens that arise from providing incentives. However, the committee could find no evidence either way to determine whether other taxpayers in the city or county ultimately derive a measurable benefit from the granting of incentives.

The committee received no comments suggesting changes to locally granted property tax exemptions or economic development incentives.

Conclusions

The committee makes no recommendations regarding its study of property tax exemptions and economic development incentives granted by cities and counties.

FOREST STEWARDSHIP TAX STUDY

Section 1 of Senate Bill No. 2279 (2013) directed the committee to study the benefits and implications on tax policy of the forest stewardship tax.

Background

History of Forest Stewardship Tax

The committee reviewed the forest stewardship tax provisions enacted in 1967 in Chapter 57-57. At the time of enactment, the provisions were referred to as the native woodland tax because application was limited to areas of land normally supporting a growth of natural forest cover. The law allowed the owner of a tract of native woodland 10 acres or larger in size to apply to the State Forester to place the tract under the woodland tax. The law required the State Forester to examine the land and approve the application if the native woodland was found to produce a forest cover. If approved, the property was to be subjected to a property tax "computed at a rate determined to be equitable by the county commissioners and the State Forester . . ."

In 1973 the law was revised and the chapter reference was changed from the native woodland tax to the woodland tax because the tax benefit was extended to include planted forest cover. Under the 1973 changes, eligible forest cover included natural forest cover of 10 acres or more, planted forest cover of five acres or more but not less than 60 feet wide, or a combination of natural and planted forest cover of at least 10 acres.

In 1991 legislation changed the name of the woodland tax to the forest stewardship tax. An amendment provided that the forest stewardship tax would apply in any county in which the board of county commissioners had approved by resolution the application of the forest stewardship tax to all qualifying property in the county. Applications for forest tax treatment in those counties approving it would be forwarded to the board of county commissioners and then sent to the State Forester for final review of whether the applicant's property qualified. The 1991 legislation changed the tax rate for qualifying property from a rate determined to be equitable by the board of county commissioners and the State Forester to a flat rate of 50 cents per acre.

Evolution of Agricultural Property Assessments

Since 1991, detailed soil surveys have been completed for all counties in North Dakota. Statutory provisions have been added to require that in determining relative value of agricultural property parcels, the local assessor shall apply soil type and soil classification data from detailed or general soil surveys, which may be adjusted based on a schedule of modifiers within the county as approved by the State Supervisor of Assessments. It is likely that under prior law, local assessors assigned a relatively low value to forest-covered lands in recognition of diminished productive capacity.

In recent tax years, owners of forest acreage have been surprised by substantial increases in property tax applied to those lands. Owners discovered the reason behind these increases was the application of assessment based on soil survey information. Assessments for these properties had increased substantially because the soil underlying much of this forested acreage is very high-quality soil. Counties could have applied modifiers to tempering these valuation increases, but some counties did not foresee the potential for such substantial increases and thus did not have the appropriate modifiers in place.

2013 Legislation

Senate Bill No. 2279 was introduced to revive the original purpose of the forest stewardship tax to encourage retention of forested acreage in the state. In counties in which the board of county commissioners had approved application of the forest stewardship tax, the tax rate of 50 cents per acre continues to apply. However, in counties that had not approved application of the forest stewardship tax, property taxes on forested acreage were increasing dramatically and causing concern that forested acreage would be lost if owners could not afford to maintain the forest cover and pay higher taxes.

As introduced, Senate Bill No. 2279 would have eliminated the requirement for the board of county commissioners to approve the application of the chapter to all qualifying property in the county by resolution. The bill would have allowed the county to approve applications on a case-by-case basis for qualifying forest property, with the same size requirements for natural and planted forest cover as in current law. The bill would have grandfathered in the tax treatment for any property that was already receiving forest stewardship tax treatment on December 31, 2012. The bill would have provided that property approved for forest stewardship tax treatment would be classified as agricultural property for all purposes, but must be excluded from calculation of agricultural value for the county under the agricultural property productivity valuation formula. The bill would have removed the set tax rate of 50 cents per acre and substituted agricultural property valuation for forest stewardship properties based on a true and full value of 50 percent of county average agricultural value per acre for noncropland.

During hearings on the bill, concerns were expressed regarding how real estate taxes for the 658 landowners already enrolled in the forest stewardship program would be impacted. New landowners applying for the program would receive a positive benefit, but landowners already enrolled in the program would likely see a significant tax increase. Further discussion during the Senate Finance and Taxation Committee meetings revealed the committee lacked the information needed to make appropriate adjustments to the forest stewardship tax without creating potentially serious unintended consequences. The bill was ultimately amended into a study resolution to be considered by the interim Taxation Committee.

Testimony and Committee Deliberations

The committee received information that the State Forester sought funding assistance for the forest stewardship tax program through the North Dakota Outdoor Heritage Advisory Board, but the request for assistance was not approved. The committee received testimony from the State Forester regarding three recommendations to address forest resources and property tax issues that were developed in cooperation with the North Dakota Association of Counties and the Game and Fish Department. The first was to increase enrollment of private forestlands in the forest stewardship tax program to 62,862 acres by 2017. The second was to amend Section 57-57-06 to change the tax from 50 cents per acre to a tax of 30 percent of the county average agricultural value per acre of noncropland. The third recommendation was to establish a long-term source of state funding to reimburse counties for the difference in tax revenue received versus the amount that would have been realized had the forested land been taxed using estimated noncropland average agricultural values. It was anticipated that for the eight counties currently participating in the forest stewardship program, a $123,000 appropriation would be required to cover reimbursement for the 2015-16 fiscal year. A representative of the North Dakota Association of Counties expressed the opinion that state support would likely increase county participation in the program. Testimony provided by a representative of the Tax Department also indicated support for these three recommendations.

The committee learned that the forest stewardship tax program as it currently operates does not have a significant effect on county budgets, but can have an effect on the taxes paid by other landowners. The committee received information on similar programs used in other states, such as long-term easements and fee acquisition programs. The State Forester expressed opposition to these approaches. The Tax Department removes wooded lands from the agricultural property classification if they are eligible for the forest stewardship tax. Modifiers can be applied to reduce the valuation of these lands that are not eligible for the forest stewardship tax, but the most significant reduction that has been seen is only a 35 percent reduction. The committee learned that legislative efforts to create additional classifications for agricultural land that cannot be fully utilized as pasture or cropland have been attempted in the past but no additional classifications have been agreed upon. A committee member expressed concern that opening up reduced assessments for one type of land would spur additional requests for special tax treatment for other types of land.

After taking into consideration the issues surrounding the forest stewardship tax, the committee determined the issue was only of real concern in select counties rather than statewide. The committee encouraged legislators who may have a particular interest in the issue to bring forth legislation during the 2015 legislative session.

Conclusions

The committee makes no recommendation regarding its study of the forest stewardship tax.

TRIBAL AND STATE RELATIONS COMMITTEE

North Dakota Century Code Section 54-35-23 established 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. 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; and
- Under Section 12 of 2013 Senate Bill No. 2030 to receive a report from the State Department of Health on the status of the tribal public health unit project.

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; Dave Archambault II, Chairman, Standing Rock Sioux Tribe; Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians; Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and Russell McDonald, Chairman, Spirit Lake Tribe. Myra Pearson was elected chairperson of the Spirit Lake Sioux Tribe in September 2014 and, at that time, replaced Russell McDonald as a member of the North Dakota Tribal Governments' Task Force.

Committee members were Dennis Johnson (Chairman), Marvin E. Nelson, and Wayne Trottier and Senators Oley Larsen, Dave Oehlke, and John M. Warner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th 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 nonintercourse 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 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. 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. 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.

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. 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.

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. 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.

2013 LEGISLATION AFFECTING TRIBES

House Bill No. 1005 amended a portion of the statutory authority governing the state-tribal oil and gas tax agreement to make clear the state's share of oil and gas gross production tax revenue is subject to distribution among political subdivisions as provided in the gross production tax law.

House Bill No. 1180 established a pilot program for the provision of independent case management services under the service payments for elderly and disabled program and a pilot program for the provision of independent case management services under the medical assistance home and community-based services program. Both of the pilot programs for the 2013-15 biennium were to be established within a county located entirely within an Indian reservation.

House Bill No. 1198 eliminated stripper well property status for wells drilled and completed or reentered and recompleted after June 30, 2013. The bill provided for a reduced oil extraction tax rate of 2 percent for the first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations after June 30, 2013.

The bill revised the statutory framework for the state-tribal oil and gas tax agreement. The bill eliminated the five-year exemption for wells drilled on an Indian reservation after June 30, 2013. The bill increased the tribal share of revenue allowable under the agreement for production on nontrust lands from 20 percent of oil and gas gross production taxes to 50 percent of total oil and gas gross production and oil extraction taxes. The bill provided the state-tribal agreement must require the Three Affiliated Tribes report annually to the Budget Section of the Legislative Management to identify investment of at least 10 percent of tribal oil and gas gross production and oil extraction tax receipts in essential infrastructure and inform the Budget Section of fees, expenses, and charges the tribe imposes on the oil industry.

The bill also provided for income tax withholding for oil and gas royalty payments to nonresidents. Any person who distributes royalty payments to oil and gas royalty owners is required to deduct and withhold from the net amount of royalty payment to each nonresident individual or business entity. If the royalty payment to a royalty owner is less than $600 for the current withholding period or less than $1,000 per year, the Tax Commissioner may grant a request to forgo withholding and a remitter is exempt from the withholding requirement if the remitter produced less than 350,000 barrels of oil or less than 500 million cubic feet of gas in the preceding calendar year.

House Bill No. 1278 established a North Dakota outdoor heritage fund into which up to $30 million per biennium of oil and gas gross production tax revenues must be deposited. The bill provided the fund must be used to provide grants to state agencies, tribal governments, political subdivisions, and nonprofit organizations to provide access to private and public lands for sportsmen, support stewardship practices, develop and conserve wildlife and fish habitat, and conserve natural areas for recreation. The bill required the Industrial Commission to manage the fund and provide staffing for meetings of the North Dakota Outdoor Heritage Advisory Board. The bill provided the board consists of 12 members appointed by the Governor.

Senate Bill No. 2030 authorized an Indian Nation that occupies a reservation the external boundaries of which border more than four counties to form a health district or public health department, provides the terms of such public health unit, revises the definition of "regional public health network" as that term applies to the regional public health networks law, and revises the requirements a group of public health units must meet in order to be designated as a regional public health network and to qualify for state funding, including codifying core public health activities.

Senate Bill No. 2119 authorized the Director of the Office of Management and Budget to coordinate with the Director of the Department of Transportation to establish or participate in contracts which may be made available to entities that have been determined by the department to be transportation providers eligible to receive state funds or federal funds for public transportation. The bill also defined a transportation provider, for the purposes of public transportation funding, to include a tribal agency.

Senate Bill No. 2218 established within the Division of Workforce Development of the Department of Commerce a program to provide workforce development grants to tribally controlled community colleges. The bill provided a college may use a grant to develop programs that assist in providing certificates or degrees to North Dakota students attending the college that qualify the student to obtain jobs for which applicants are being sought within the state, as identified by the department, Job Service North Dakota, or any of the federally recognized Indian tribes within North Dakota or to assist any North Dakota student attending the college to establish, or to assist in establishing, a new business operating within North Dakota that will employ North Dakota citizens. The bill required tribal colleges receiving grants to report annually to the department regarding the expenditures under the grant and the results of the grant program.

TAXATION IN INDIAN COUNTRY

Tribal-State Tax Agreements

Tax Collection Agreements with Tribal Governments

The committee received information throughout the interim regarding state and tribal tax agreements. The agreements must comply with the following three requirements:

- To ensure uniformity between state law and tribal code, the tribal code or ordinance must be substantially similar to the state law;
- The Tax Department must administer the tax for the tribes; and
- The state must retain a small administration fee.

The committee received information regarding the cigarette and other tobacco products tax collection agreement with the Standing Rock Sioux Tribe. The agreement, which was negotiated in 1993, was reported to be in the final stages of renegotiation to change the revenue distribution from 75 percent to the tribe and 25 percent to the state to an 87/13 percent split and to reduce the administration fee from 3 percent to 1 percent.

The Tax Commissioner's office also reported on the status of the motor fuel and special fuel tax collection agreements with the tribal governments. 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. The state also has had motor fuel and special fuel tax collection agreements with the Standing Rock Sioux Tribe since 1999, the Spirit Lake Sioux Tribe since 2006, the Three Affiliated Tribes of the Fort Berthold Reservation since 2007, and the Turtle Mountain Band of Chippewa Indians since 2010. The report indicated the motor fuel and special fuel tax collection agreement with the Standing Rock Sioux Tribe also is in the final stages of renegotiation.

Sales and Use Tax Collection Agreement

The committee learned officials of the Standing Rock Sioux Tribe had discussed with the Tax Commissioner the possibility of a tax collection agreement between the Tax Commissioner and the Standing Rock Sioux Tribe for collection and allocation of revenues under the state sales tax for sales within the reservation. The testimony indicated it was the opinion of the Tax Commissioner's office, the Governor's office, and the Legislative Council that legislative approval is needed for the tribe and state to enter an agreement for the collection and sharing of sales and use taxes on the reservation. Testimony from tribal officials indicated the Standing Rock Sioux Tribe would like to engage the Legislative Assembly in creating a law that would delegate the authority to enter such an agreement.

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 the state's agreement with the Three Affiliated

Tribes has been a great success in terms of providing a stable, predictable tax and regulatory environment in order to encourage development of oil and gas resources within the reservation.

In the year leading up to the 2013 legislative session, the tribe's council and other representatives continued to seek a revised tax agreement. The discussion resulted in inclusion of amendments to 2013 House Bill No. 1198, which revised the statutory authorization for the state's tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation. The most significant change was a substantial increase in the tribal share of oil and gas taxes under the requirement that the allocation of oil and gas production and extraction taxes on nontrust land under a revised agreement must be 50 percent for the state and 50 percent for the tribe. House Bill 1198 also added a requirement that any tax agreement must provide for an annual report from the Three Affiliated Tribes to the Budget Section that informs the Budget Section about tribal investments in essential infrastructure; fees, expenses, and charges the tribe imposes on the oil industry; and specifically identifies essential infrastructure projects totaling at least 10 percent of oil and gas production and extraction tax receipts. The revised tax agreement that included the provisions of the new law was signed by the Governor and the tribal chairman on June 21, 2013, and went into effect on July 1, 2013.

Most importantly to the tribe, the division of revenue under the revised tax agreement was changed to reflect an equal division between the state and tribe for both gross production and extraction taxes on nontrust lands within the reservation. The tax agreement was also amended to acknowledge the $100,000 per well "spud fee" the tribe had been imposing under the previous agreement. The agreement continues to prohibit tribal taxes or fees that target or disproportionally impact the oil and gas industry while recognizing tribal authority to impose generally applicable taxes that do not affect the oil and gas industry differently than other similar business activities. A representative of the Tax Department reported the tribe was receiving approximately $20 million per month as a result of the revised agreement.

SUPREME COURT COMMITTEE UPDATES

The committee received updates throughout the interim from representatives of the Committee on Tribal and State Court Affairs. The committee was established in 1994 by North Dakota Supreme Court Administrative Rule 37 after a study group of state and tribal judges concluded the resolution of some issues was not occurring because of the lack of communication between tribal and state courts. Several examples of issues discussed by the committee include the handling of tribal court judgments in the state court system and the establishment of a court procedure for tribal arrest warrants. Other issues addressed by the committee include child support, drug crimes, game and fish, gaming, the Indian Child Welfare Act (ICWA), and the cross-deputizing of law enforcement officers. According to the testimony, the committee works to maintain a chain of communication between tribal and state officials.

The committee received information on the Commission to Study Racial and Ethnic Bias in the Courts. The commission is working on implementing the recommendations included in the 2012 final report of the commission. The discussion points of the commission include passport law, protection order law, tribal DUIs, legal assistance, and witness programs. According to the information, one of the recommendations of the final report of the North Dakota Commission to Study Racial and Ethnic Bias in the Court was to implement the Extending Project Passport through the state. The goal of Extending Project Passport is to build upon the success of the original Project Passport. Project Passport was designed to improve recognition and enforcement of protection orders within and between states and tribes by encouraging states and tribes to adopt a recognizable first page for orders of protection, which includes common elements and format. Extending Project Passport also encourages electronic data and information sharing using established national data standards to improve the comparability and accessibility of protection order data across jurisdictions. The Supreme Court's Committee on Tribal and State Court Affairs is working with the tribal courts and the Attorney General's office to initiate a process for tribal courts to use Project Passport, as well as enter their orders of protection in the state's system so any law enforcement officer, on or off the reservation, will be able to easily identify any valid domestic violence protection order.

The committee also received information from a representative of the Court Improvement Project Committee and the status of the ICWA audit of the North Dakota court system. The purpose of the Court Improvement Project Committee is to assess and implement improvements in the roles, responsibilities, and effectiveness of state courts in court-supervised foster care and adoption cases. One of the committee's subcommittees is the ICWA Audit Subcommittee. According to the information, in an effort to measure state court compliance with ICWA requirements, the Court Improvement Project Committee, at the suggestion of the ICWA Audit Subcommittee, undertook an ICWA audit project. The three-year project began with an initial audit the first year to set a baseline and target improvements. Audits were conducted in the second and third years to measure whether the targets were met. The results of the audit were submitted to the Court Improvement Project Committee in December 2013 for review. That committee will determine the next steps to take to address issues that are raised in the audit.

TRIBAL YOUTH

The committee received extensive testimony regarding tribal youth who are adjudicated in tribal court and the need for the establishment of a youth assessment center. The testimony indicated three tribal nations have housed delinquent juveniles in a regional jail where the youth were subject to 60 or more days of incarceration without having access to treatment, counseling, or educational services. The testimony stressed the disparity in the level of service provided to youth who are convicted of delinquent acts in state courts and for those who are convicted in tribal courts in the state. The state has a two-tiered system with services provided by the juvenile court, which is a part of the court system, and by the Division of Juvenile Services (DJS), which a division of the Department of Corrections and Rehabilitation. The Division of Juvenile Services operates eight regional offices in eight cities across the state providing services to all counties in the state. It was noted DJS does not provide direct services to juvenile tribal courts. The testimony indicated many areas in the state do not have adolescent psychiatric beds, substance abuse treatment beds, safe beds for "heightened but not imminent risk" adolescents, or detox services for adolescents, nor are detention facilities available for delinquency. The committee learned tribal courts do not have access to DJS nor to Youth Correctional Center placements. The testimony suggested the need for a regional adolescent assessment and treatment center that could hold juveniles for up to 60 days for assessment to determine what services a child and family needs and could provide a safe place for runaways, for juveniles who leave foster care, and for juveniles waiting for court hearings. It was suggested a second unit could be used to serve youth with severe behavioral and mental health needs, physical aggression, sexual behavior issues, or self-injury.

Committee Consideration

During the course of the discussion of the needs of tribal youth, the committee considered a concurrent resolution directing a study of need for collaboration between the tribes and the state in providing services for tribal youth who are adjudicated in the tribal courts. Testimony in support of the concurrent resolution indicated a study would be helpful in determining whether there is a way for tribal youth to qualify for state services. The testimony urged collaboration between tribal and state courts in formal and informal juvenile dispositions to ensure that assessments are completed and services are provided. It was suggested the concurrent resolution be amended to include the federal government in the parties involved in the study.

Recommendation

The committee recommends House Concurrent Resolution No. 3006 to study the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts.

INDIAN EDUCATION ISSUES

The committee received reports from the Department of Public Instruction throughout the interim on the status of Indian education issues. The reports included information on planning, strategies, programs, and implementation of Indian education policy and program initiatives. The reports provided information on the development of North Dakota Native American essential understandings and standards. Each essential understanding will be tribe specific based on North Dakota Historical Society Indian studies literature. The department will seek input from elders to adjust and further develop the essential understanding. The understandings will represent what is determined essential about the culture, history, language, practice, and lifestyles of the Native Americans in the state. The essential understandings will be available for use by all teachers in the state.

The Department of Public Instruction reported on the status of the Succeed 2020 program. Succeed 2020 is a program that aims to improve North Dakota's secondary education and workforce development systems and increase students' achievement in middle grades and high school, access to and success in postsecondary education, and preparation for 21st century careers. North Dakota's regional education associations are working collaboratively with multiple stakeholders, including state and local leaders, school districts, educational institutions, Native American groups, and business and industry to implement Succeed 2020.

TRIBAL COLLEGE GRANT PROGRAM UPDATE

The committee received reports throughout the interim regarding the status of the workforce development grants to tribally controlled community colleges in the state. Senate Bill No. 2218 (2013) appropriated $5 million to the state's five tribal colleges for creation or enhancement of programs and course of study to prepare students for the state's high-demand job opportunities. A report from the Workforce Development Division of the Department of Commerce indicated the guidance for grant applications, awards, and administration was developed quickly and with significant opportunity for input from tribal college representatives. Three rounds of grant applications were established to ensure full utilization of funds. The maximum grant amount for the biennium was set at $2 million per institution. Grant awards for the biennium were made August 1, 2013, December 1, 2013, and June 1, 2014.

The committee received regular reports from representatives of the tribal colleges regarding the activities, issues, and accomplishments as a result of the grants. The representatives reported the grant funds are being used to

purchase additional training equipment, hire additional instructors, reduce the length of programs, and launch new programs. Some of the high-demand programs for which the grant funds are being used include welding, commercial driver's license, heavy equipment operator, electrical technology, oilfield operations, medical coding, entrepreneurship, and law enforcement training. The representatives reported increases in enrollment, faculty, graduates, recruitment, and placement as a result of the grant funds. The tribal colleges continue to experience shortages in housing for students and have difficulty recruiting qualified instructors. Other challenges include the lack of student readiness for postsecondary education and the lack of upfront funds program graduates need to cover relocation expenses.

The testimony indicated, due to the success of the grant program, it is likely additional tribal college grant funding will be requested in the next legislative session. According to the testimony, the common goal of the grant program was to get tribal people to work, a goal that is being achieved.

TRIBAL HEALTH AND HUMAN SERVICES ISSUES

Medicaid Expansion

Under 2013 House Bill No. 1362, the Department of Human Services was directed to expand medical assistance coverage as authorized by the federal Patient Protection and Affordable Care Act to individuals under 65 years of age with income below 138 percent of the federal poverty level, based on modified adjusted gross income. The committee received testimony that an estimated 20,000 to 30,000 individuals may be eligible for the Medicaid coverage that began on January 1, 2014. Outreach materials were developed to get the word out about Medicaid Expansion and how to apply for coverage.

As of May 2014, approximately 7,800 individuals were enrolled for coverage in the state's Medicaid Expansion. Data indicated most enrollees were childless adults, 52 percent of the Medicaid Expansion enrollees were female, 56 percent were aged 19 to 44, and 69 percent lived in rural areas. It was noted the Department of Human Services initially was unable to report the ethnic and racial makeup of the Medicaid Expansion population because the contingency eligibility system did not capture that information but would be able to provide that data after the system was fully operational. The department, the Indian Affairs Commission, and the tribes actively collaborated to ensure eligible American Indians were aware of the expanded coverage and were being encouraged to apply.

Money Follows the Person Tribal Initiative

The committee received information regarding the Money Follows the Person Rebalancing Demonstration Grant: Tribal Initiative. The purpose of the grant is to enable tribes to design, manage, and provide culturally sensitive community-based long-term services and support to provide choice and to reduce the use of institutional services. The planning team of state and tribal officials prepared and submitted the grant application on October 15, 2013. The anticipated notice of award was November 14, 2013, with the anticipated grant period of November 19, 2013, through April 19, 2014, and with funding continuing through the end of the Money Follows the Person grant in 2016 with spending through 2019.

Tribal-State Dental Services

The committee received information regarding a dental health aide therapist program in Alaska and considered whether a similar program would be helpful in resolving oral health problems for North Dakota's tribal communities. According to the testimony, a comprehensive study of the implementation of dental health aide therapists found these professionals were providing safe, appropriate, and competent care. According to the information, the cost-effectiveness studies of including dental health aide therapists in the dental team have shown the dental health aide therapists can provide as many billable services as a dentist, yet they are paid about half the salary of a dentist. The available evaluations and evidence suggests the mid-level dental providers like the Alaska dental health aide therapists deliver safe, competent, and appropriate oral health care.

The committee also received testimony from a representative of the North Dakota Dental Association regarding the need for dental health aide therapists in the state. In light of the surplus of licensed dentists in North Dakota, the relative proximity of tribal communities to larger North Dakota cities, and the dysfunction of the Indian Health Service dental services, the testimony indicated adding another provider with half the training in Indian country would do little to reduce barriers to dental care and is not necessary. According to the testimony, the solutions for oral health problems for North Dakota's tribal communities should be directed to culturally relevant community prevention, efforts to improve dental delivery efficiency and Indian Health Service reform, and engagement with local dentists for specialty referral and targeted treatment initiatives.

Foster Care

The committee received information from a representative of the Department of Human Services regarding foster care procedures. The information noted Chapter 50-11 and the related administrative rules provide that approved affidavit homes can be created with an affidavit that the home meets the requirements. For those areas where the state has jurisdiction, the state licenses the foster homes. The information was provided in response to a concern from

a foster care provider who encouraged the state to allow affidavit foster care homes outside the reservation, a change that was suggested would allow for more flexible placement options and allow easier placement of sibling groups.

Fort Berthold Public Health Unit Pilot Project

As assigned by the Legislative Management, the committee received several reports during the interim from the State Department of Health on the status of the tribal public health unit pilot project under Section 12 of 2013 Senate Bill No. 2030.

In 2012 a health care workgroup composed of tribal health office leaders, the Elbowoods Memorial Health Center, the State Department of Health, and the Director of the public health master's program at North Dakota State University began working to establish a tribal public health unit on the Fort Berthold Reservation. The workgroup goals included building the tribal infrastructure to support the public health needs and to continue collaborating with the tribal programs and nontribal public health programs that support the development of an effective model of public health service delivery. It was reported the following public health programs operating within the boundaries of the reservation are providing services to the local communities--the special supplemental nutrition program for women, infants, and children; a tobacco prevention program; the Fort Berthold Coalition Against Domestic Violence; an immunization clinic; and Women's Way, a program that provides mammograms and pap test screenings to eligible women between the ages of 40 and 64 who live on the reservation. It was reported the Three Affiliated Tribes of the Fort Berthold Reservation continues its preparations to enter into collaboration with the State Department of Health that will allow for continued integration of primary and public health care based on the core principles of public health and its services, will also be seeking to establish networks with regional public health units so an effective and efficient model for delivering public health services to the reservation population will be met, and plans to continue management of its health through the Public Law 638 contracting of its health services from the Great Plains Indian Health Service.

Standing Rock Home and Community-Based Services Pilot Project

The committee also received an update from a representative of the Department of Human Services regarding a pilot project under 2013 House Bill No. 1180 to improve access to home and community-based services to the Standing Rock Sioux Tribe. The report indicated the department and the tribe are working to create a business model for billing the state for home health services.

CENTRAL INDEXING AND TRIBAL VOTING IDENTIFICATION

The committee received testimony from the Secretary of State's office regarding the central indexing system, the Uniform Commercial Code (UCC), and tribal voting identification.

Discussions between the Secretary of State's office and the Indian Affairs Commission have addressed economic development on tribal land and the benefits of tribal governments having regulations and a filing system for UCC-secured transactions. Upon completion of a new central indexing system for UCC and other business transactions, the Secretary of State's office will again extend an offer to the tribal governments to explore the possibility of executing a joint agreement to allow UCC filings to be effective on tribal lands.

The committee also received testimony from the Secretary of State's office regarding the tribal identification database of the Bureau of Indian Affairs and the state's central voter file to facilitate the use of tribal identification for voting purposes. With the passage of 2013 House Bill No. 1332, voters are required to provide an acceptable form of identification which includes the voter's name, residential address, and date of birth in order to receive a ballot and vote in an election. A tribal identification card that includes the required information and which is issued to a resident of the state from a tribal government within the state is one of the acceptable forms of identification for voting. Because not all tribal identification cards list all of the required information in order to vote, the Secretary of State's office reported it is in the process of meeting with each of the tribal councils in the state to discuss the possibility of receiving the names, residential addresses, birth dates, and tribal identification numbers of tribal members so the data could be included in the central voter file. With this information included in the voter's record, the process for receiving a ballot for voting would be expedited for those individuals providing tribal identification cards in the same manner as for those voters using their North Dakota driver's license or nondriver's identification card. A discussion with the Bureau of Indian Affairs revealed for the data to come to the Secretary of State's office directly from the Bureau of Indian Affairs, a resolution would be needed from each of the tribal councils in the state. The testimony indicated the Secretary of State's office was scheduling meetings with the tribal governments in the state for that purpose.

BOARD OF UNIVERSITY AND SCHOOL LANDS STUDY

The committee received reports from the Commissioner of the Department of Trust Lands throughout the interim on the status of a Board of University and School Lands study, directed by 2013 House Bill No. 1338, of options to address the concern of landowners adjacent to land surrounding Lake Sakakawea and Lake Oahe, which is under the control of the Army Corps of Engineers. The testimony indicated some of the concerns of the interested parties

included grazing rights on corps land, control of noxious weeds, and protecting public access for hunting and fishing. The committee learned the study was conducted by surveying seven special interest groups listed as producer, conservation or wildlife, state or federal agency, tribal, county and city, recreation, and other. The surveys were tallied according to each group to determine cohesiveness among and between the groups. The survey was sent to 520 individuals, organizations, counties, and agencies, of which 210 responses were completed and returned. In March 2014, public meetings were held in New Town, Garrison, Linton, Beulah, and Fort Yates with a final general public meeting held in Bismarck on June 11, 2014. After the June 11 meeting, the draft options were developed and presented to the Board Secretary of the Board of University and School Lands. A revised draft was presented to the Board of University and School Lands at its August meeting, and the final report was scheduled to be presented to the Legislative Management.

Testimony received from a representative of the Standing Rock Sioux Tribe discussed examples of legislation passed over the years which was intended to transfer lands back to the tribes. According to the testimony, although the tribes have an agreement for a transfer of corps land to the tribes which was entered 30 years ago, the corps has not cooperated. Concerns were expressed a state action could complicate long-standing efforts to return land. It was indicated the best way to proceed in efforts to reclaim the land from the corps would be for the state to support the tribes' efforts rather than risk complicating the efforts of the tribes in working with the corps and the federal government.

TRIBAL ROADS

The committee received reports throughout the interim regarding the conditions of the tribal road systems. The reports indicated while each of the state's tribes face unique obstacles to improve tribal road systems to adequate and acceptable conditions, all tribes share the common problem of insufficient federal funding to properly maintain and provide safe transportation conditions. According to the reports, most of the money from the federal government is used to cover maintenance with little opportunity to grow or improve the tribal road system. Much of the testimony on the condition of tribal roads focused on the greatly increased traffic and deterioration of tribal roads on the Fort Berthold Reservation due to oil industry-related traffic and the need for reconstruction of Jack Rabbit Road on the Turtle Mountain Band of Chippewa Indians Reservation. The testimony regarding Jack Rabbit Road focused on the deteriorating condition of the road, the usage, the nonconforming width and shoulders of the road, fatality and crash statistics, and the costs of reconstruction.

Representatives of the Department of Transportation briefed the committee on grant programs available for tribal transportation projects. The department noted state law provides state highway funds may be spent only on projects associated with state highways, but indicated the department planned to continue to work with tribal governments through federal programs. The department provided information on the Transportation Investment Generating Economic Recovery (TIGER) discretionary grant program, which is part of the federal American Recovery and Reinvestment Act. In 2014 the federal government announced $600 million in TIGER grant funds would be available to fund transportation project across the country. According to the information, a typical TIGER grant request is for 40 percent of the cost of the project with the requester providing 60 percent in matching funds.

Other testimony suggested the tribes may need to consider revenue derived through tribal-state tax agreements as a means of funding road projects.

WATER ISSUES

The committee received testimony from the State Water Commission regarding tribal water needs and tribal reservations' eligibility for water projects. The testimony recognized the needs on reservations for adequate supplies of drinking water, but indicated the tribes are not eligible to receive direct grant funding. Rather, the tribes must partner on the water project with a political subdivision, such as a city near a reservation. While cost-sharing agreements are possible between the state and the political subdivision for projects such as drinking water, irrigation, and flood protection, the state does not need to be involved in the agreement between the tribe and the political subdivision. According to the testimony, the State Water Commission is interested in a sustainable infrastructure and wants assurance the political subdivision will be able to collect the revenues to maintain and replace the facilities.

Testimony from tribal representatives indicated the water issues have been a concern of the tribes for decades. The testimony indicated cooperation between a political subdivision and a tribe is not always possible. It was noted that even though the state has financially benefited greatly from oil wells on tribal lands, the tribes cannot get money from the state for water projects. The need for constant communication about what the state is doing with water was emphasized. Tribal representatives indicated because some of the $515 million the State Water Commission is spending this biennium on water projects across the state will have an impact on tribal water, having a tribal voice is important in the process. Finally, it was noted because a tribe received an irrigation grant from the State Water Commission in the past, there is precedence for a tribe to receive grants directly from the state for a water project.

TRIBAL HOUSING

The committee received information regarding the housing needs and concerns of the tribes as well as efforts the tribes are making to improve housing for tribal members.

A representative of the Turtle Mountain Band of Chippewa Indians provided information the tribe has a shortage of 660 housing units and 1,408 homeless people. The federal government has not increased the housing assistance allocation through the Indian housing block grant program since 1996. The grant has been funded at a level of $650 million for the last 18 years. The testimony reviewed housing projects currently under construction on the reservation including a 25-unit apartment complex for family college students, a homeownership loan program, a new home construction plant, a new retirement home, and a rehabilitation grant for renovating two office buildings into homeless shelters.

Testimony from a representative of the Three Affiliated Tribes of the Fort Berthold Reservation indicated a need for 300 to 400 homes. With the reservation's population doubling in recent years, the testimony indicated providing affordable housing has become even more challenging. It was noted new housing being built in the area is being geared to oil industry needs and not the tribes. The testimony reported a 20-unit complex had been completed with another one in progress. It was emphasized the key to housing is affordability.

Representatives of the Standing Rock Sioux Tribe indicated at least 500 families were in need of housing. In addition, the large geographic area of the reservation makes it challenging to provide water, utilities, and other services to the homes. The difficulty in obtaining bank funding was discussed as a major obstacle to homeownership since banks do not loan money for structures built on trust property. It was noted the tribe's adoption of the first tribal UCC, which is similar to the commercial codes of North Dakota and South Dakota, will allow for more commercial and banking transactions.

Testimony from representatives of the Spirit Lake Sioux Tribe indicated the tribe's housing shortage is due in part to the high water table problems in the Devils Lake area. The water issues have led to black mold issues, making many homes uninhabitable. Maintenance and repair of existing housing is also an issue. It was emphasized the state and the tribes need to work together to resolve the tribal housing issues.

NORTH DAKOTA INDIAN BUSINESS ALLIANCE

The committee received a report from the North Dakota Indian Business Alliance regarding native-owned private businesses in the state. According to the report, the North Dakota Indian Business Alliance, which was incorporated as a nonprofit organization in April 2013, received a two-year grant of $50,000 per year through the Department of Commerce. It was reported the alliance provides advisory services and referrals to technical assistance providers, has an interactive website, a series of educational webinars under production, an email list serve with quarterly newsletters and regular news posts, a database of several hundred tribal-owned businesses in the state, micro-grants of $500 to $1,000 for startups and marketing support, and mentorships and internships through the University of Mary.

The significant outcomes of the alliance include the Turtle Mountain manufacturing plant contract to resume operation in producing modular buildings, a UCC passed by the Standing Rock Sioux tribal council in June 2014, the securing of a $100,000 grant to support the alliance's economic summit, micro-grants, and education offerings. Future considerations include the strengthening of connections with a national tribal college association and the transfer of Native American economic and community development oversight from the Department of Commerce to the Indian Affairs Commission.

TOURISM

Tribal representatives briefed the committee on efforts to expand tourism in the state and in Indian country. The testimony suggested a tribal tourism grant program, similar to the tribal college grant program, would be helpful as a way for the tribes to partner with the state to develop tourism in Indian country. The testimony indicated tribal tourism industry currently is very limited, but there is a market for expansion. It was noted many domestic and international visitors have an interest in Indian country.

WATER TOPICS OVERVIEW COMMITTEE

North Dakota Century Code Section 54-35-02.7 directs the Legislative Management during each interim to appoint a Water Topics Overview Committee in the same manner as the Legislative Management appoints other interim committees and to designate a Chairman. The committee must meet quarterly and is to operate according to the statutes and procedure governing the operation of other Legislative Management interim committees. This section was first enacted in 2009, and the committee was named the Water-Related Topics Overview Committee. The name was changed in 2013.

Section 54-35-02.7 provides the committee is responsible for:

1. Legislative overview of water topics and related matters;
2. The Garrison Diversion Project; and
3. Any necessary discussions with adjacent states on water topics.

In addition, the committee must:

1. Work collaboratively with the State Water Commission to develop policies to further define the state role in major flood control projects.
2. Develop a schedule of priorities with respect to water projects with the required assistance of the State Water Commission and State Engineer and assistance from other stakeholders as deemed appropriate.
3. Study policies regarding the development and financing of municipal projects, including:
   a. Water treatment plants; and
   b. Pipelines, including:
      (1) Pipeline expansion;
      (2) Public and industrial use of water;
      (3) Cost analysis of future projects; and
      (4) Technology, including:
         (a) Technology for permitting; and
         (b) Technology for electronic metering.
4. Review water supply routes and alternatives for the Red River Valley Water Supply Project (RRVWSP).

The committee was assigned two studies in addition to its statutory responsibilities. Section 26 of 2013 Senate Bill No. 2233 requires the Independent Water Providers and the Western Area Water Supply Authority (WAWS) to report to this committee and collaborate with this committee and the State Water Commission to monitor water usage, rates, and market share. The committee must report on the state's ability to maintain its payment schedule.

The committee was assigned a study on water project prioritization in Section 2 of 2013 House Bill No. 1206. The study is to evaluate current water project prioritization processes for effectiveness in determining high-priority water projects for State Water Commission funding. Section 1 of the bill requires the commission to develop and maintain a comprehensive water development plan organized on a river basin perspective, including an inventory of future water projects for budgeting and planning purposes. As part of the commission's planning process, the commission is required to develop a policy that outlines procedures for Commissioner-hosted meetings within the following drainage basins:

1. Red River.
2. James River.
3. Mouse River.
4. Upper Missouri River.
5. Lower Missouri River.
6. Devils Lake.

These meetings are to facilitate local project sponsor participation and project prioritization and to assist in project cost-benefit analysis for projects expected to cost more than $500,000.

The legislative history reveals the bill was meant to:

- Develop and maintain a state water management plan organized on a river basin perspective instead of a use perspective.
- Establish a cost-benefit analysis.
- Require State Water Commission meetings in the six major water basins to facilitate participation by local project sponsors.
- Require a study to prioritize the funding of water projects to refine the present process to make it more effective and efficient.

The committee was assigned the responsibility to receive two additional reports. Section 13 of 2013 Senate Bill No. 2020 requires the State Water Commission to report the findings of a study on the Mouse River and its tributaries to the committee. This study done by the State Water Commission must include a study of:

1. Causes of flooding; and
2. Measures that could be taken to:
    a. Improve waterflows.
    b. Reduce flooding.
    c. Reduce the amount of time flooded land is affected.

House Bill No. 1338 (2013) requires the Board of University and School Lands to report the results of a study of land adjacent to Lake Sakakawea and Lake Oahe. In particular, the board must study concerns of landowners adjacent to land under the control of the Army Corps of Engineers. The study must include:

1. Consideration of control of noxious weeds;
2. Protecting public access for hunting and fishing;
3. The costs of possible transfer of land from the Army Corps of Engineers; and
4. The costs associated with maintaining any property transferred to the state.

Committee members were Senators Tony Grindberg (Chairman), Ray Holmberg, Gary A. Lee, Larry Luick, and Larry J. Robinson and Representatives Bill Amerman, Dick Anderson, Ron Guggisberg, Curt Hofstad, Curtiss Kreun, Scott Louser, Naomi Muscha, Jon Nelson, Todd Porter, Jim Schmidt, and Vicky Steiner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

RED RIVER WATER SUPPLY PROJECT REVIEW

Red River Valley Water Supply Project Background

Garrison Diversion has turned part of its focus toward supplying the Red River Valley with a reliable supply of quality drinking water. Research suggests a strong possibility for a drought, such as the one that occurred in the 1930s, could hit the Red River Valley at some point in the next five decades. This drought could be of the same magnitude as the 1930s drought or may be worse. With the rising population of cities such as Fargo and Moorhead, the water demand during a drought would be even greater than in previous decades.

The Dakota Water Resources Act calls for $200 million of federal appropriations for the RRVWSP. A study began in 2000 with a memorandum of understanding signed between the state, represented by the Garrison Diversion Conservancy District, and the federal government, represented by the Bureau of Reclamation.

The Dakota Water Resources Act of 2000 authorized the RRVWSP to provide a reliable supply of quality drinking water for the Red River Valley. The Act also mandated the preparation of an environmental impact statement with joint leadership between the federal government and the state. The Governor assigned the Garrison Diversion Conservancy District to represent the state in the RRVWSP. The purpose of the environmental impact statement was to evaluate alternatives to meet the long-term water needs of the Red River Valley in North Dakota and three cities in Minnesota--East Grand Forks, Moorhead, and Breckenridge.

A draft environmental impact statement was released by the Bureau of Reclamation and the state in December 2005. The draft environmental impact statement evaluated eight alternatives to meet the water supply needs of the Red River Valley. Of these alternatives, three utilized existing surface water and ground water sources in North Dakota and Minnesota, four imported water from the Missouri River, and one included the future of the Red River Valley if no project were built. The four import alternatives included water treatment plants to reduce the risk of transferring invasive species. A supplemental draft environmental impact statement was released on January 31, 2007, which contained revisions to the draft environmental impact statement and was written to incorporate responses to substantive comments related to environmental issues received on the draft environmental impact statement. New information became available, and additional analyses relevant to environmental concerns and issues were conducted in response to the comments. After the additional analyses, the supplemental draft environmental impact statement eliminated two of the alternatives contained in the draft environmental impact statement from further consideration and identified the Garrison Diversion Unit import to the Sheyenne River as the state and federal preferred alternative.

The Bureau of Reclamation and the state released the final environmental impact statement on December 21, 2007. This document includes responses to public comments received on the draft and supplemental draft environmental impact statements. The document also contains a final biological assessment prepared in compliance with the Endangered Species Act, an analysis of forecasted depletions and sedimentation on the Missouri River main stem reservoir system, and a review of climate change literature.

After due consideration and evaluation of technical, hydrologic, and design aspects and water permitting and environmental impacts, the state and the Bureau of Reclamation each identified the Garrison Diversion Unit import to the Sheyenne River alternative as the preferred alternative.

Proponents of this alternative note the Garrison Diversion Unit import to the Sheyenne River alternative provides positive benefits to the environment and harbors no significant negative environmental impacts. It meets the water needs of the Red River Valley now and in the future. This option also provides the core infrastructure for all water systems in the Red River Valley, thus offering the flexibility of future expansion. It has no technical constructability issues and is the least costly of the three Missouri River import alternatives. The Garrison Diversion Unit import to the Sheyenne River alternative would transport water through the McClusky Canal, and then utilize a buried pipeline from a biota treatment facility to the Sheyenne River north of Lake Ashtabula. Lake Ashtabula would act as a regulating reservoir. From there, water would be released in the Sheyenne River and flow into the Red River supplying water systems in the Red River Valley with a reliable supply of drinking water.

The RRVWSP has not received a record of decision from the federal government. In addition, 2013 House Bill No. 1020 requires the Water Topics Overview Committee to review during the 2013-14 interim water supply routes and alternatives for the project. Under Section 12 of House Bill No. 1020--the State Water Commission's appropriation bill, of the funds appropriated in the water and atmospheric resources line, $11 million was for the RRVWSP.

Testimony and Discussion

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.

The committee reviewed the present plans for federal involvement in the RRVWSP. However, as the interim passed, the committee reviewed the concept as a state project without federal involvement. The reason for the shift was the lack of a record decision by the federal government. In addition to not receiving a federal record decision, other impediments to the project include concerns of Canada and other states, including Missouri and Minnesota. Committee discussion included that some Canadian legislators are concerned about water supply and the RRVWSP could be perceived as a benefit to the Canadians.

As state and federal involvement in the project changed, so did the project. Committee discussion included that it appears that the RRVWSP will have to depend upon state and local funding. Committee discussion included that at some point, the state needs to declare the project a state project and start the project. The project will take generations and the timing of the funding will take a long time as well.

The committee was informed that the RRVWSP with federal participation is for drought mitigation and not for day-to-day usage. The committee was informed that there has been a history of drought in this semi-arid area, but there also needs to be additional water for growth. Fargo uses 20 acre-feet per year, and this is projected to double by 2050. All water for Fargo comes from the Red and Sheyenne Rivers and there are no wells to provide water. Devils Lake can provide two years of short-term water supply. In addition, the Red River Valley communities have rights to the water in Lake Ashtabula. Lake Ashtabula can provide one year of short-term water supply.

The primary purpose of the RRVWSP with federal involvement was to provide supplemental water to Fargo in times of drought. Now that the project is being investigated as a purely state project, the project may need to be used for providing water to more places in the state. The Missouri River is the only source of reliable water supply for cities in the state.

The committee was informed that the project as a state project needs to be studied more to avoid legal issues. There are important legal issues anytime water crosses the Continental Divide. The corridors need to be reevaluated if there is not federal involvement to look for federal issues. The federal issues include the federal works at the lake, getting the water out of the Missouri River, and getting pipelines across this state without going over federal lands. In moving water from Devils Lake to the Sheyenne River, water was dropped over land and not directly into the river. The same technique may be able to be used with the RRVWSP. There would be additional cost for the RRVWSP as a state project because of the need for miles of pipeline. If federal works were allowed to be used, then the McClusky Canal could be used instead of more pipeline.

To be a state project, water would have to be taken indirectly from the Missouri River. One option is collector wells. Collector wells would provide the additional benefit of riverbank filtration, which is a form of treatment. The state is committed to addressing Canadian concerns by providing a high level of treatment before the water crosses the Continental Divide.

The United States Highway 200 route is the preferred federal plan and the state cannot get a record decision. Value engineering is being done to address the issues of building the project without a federal nexus. Once the issue of finding a source of water is completed, the next issue will be which corridor. If the only place that water may be taken out of the Missouri River is near Bismarck, then the United States Highway 200 corridor may not make sense.

Committee discussion included that the project should be reviewed to see if there can be an interconnection of water systems across the state. There is an enormous need for water in the middle of the state. To be a water supply project, the pipe capacity would have to be increased to address these needs, and that greatly increases the costs. These considerations will have to be addressed if it is a state project.

Affordability of water for industry and residential use is a major issue for the RRVWSP. The project may raise costs from $1.8 million to $4.3 million for value-added agriculture industry in 2018. Committee discussion included that the affordability for residents is important as well. If the project went forward with 100 percent local funding, it would raise water rates by $10 per 1,000 gallons. If there is a 50/50 split, the water rates would be raised to approximately $7.50 per 1,000 gallons. The committee was informed that entities receiving water from the RRVWSP will pay for the expenses from day one. Fargo will pay based on the amount of capacity received by Fargo and the city expects to pay 40 to 50 percent of the local cost.

COST-SHARE POLICY AND PRIORITIZATION STUDY

The Water Topics Overview Committee had a joint meeting with the State Water Commission on the cost-share policy and prioritization process. The committee received information on 2013-15 water project funding priorities, the draft project prioritization guidance concept, and the draft cost-share policy. The 2015-17 project inventory includes 177 projects that may qualify for some type of funding assistance. The committee approved the project prioritization guidance concept (Appendix A). The State Water Commission will fund in all prioritization categories, but there will be different cost-share. The committee approved the cost-share policy (Appendix B). Appendix B compares the previous cost-share policy with the new cost-share policy.

The prioritization process and the cost-share policy are closely linked. The issues with each overlap with issues of the other. The following are the major issues relating to economic development and rapid growth, rural water systems, tribes, land purchases, and litigation.

Economic Development and Rapid Growth Issues

The water project prioritization assigns a high-priority project status to address severe and anticipated water supply shortages for domestic use. This status would apply in areas with a three-year average population growth of greater than 3 percent. The list within the high-priority projects is not hierarchical.

Committee discussion included that the mission of the State Water Commission is to improve the quality of life and the economy. If an industry comes to an area in which there is not population growth, the industry should not be treated differently from when there is population growth. It was argued that the prioritization should not contain the three-year average population growth greater than 3 percent as a measure of population growth. A community that is subsidized for growth will indirectly subsidize business, so projects for economic development should be given the same priority.

A person from Grand Forks presented for consideration by the State Water Commission the possibility of having a fertilizer plant as a justification for expanding the water treatment plant. Commission discussion included an understanding of the need, but the commission pointed out that it cannot fund economic development. To the contrary, committee members suggested that water plant expansion is for growth and water quality. Committee discussion included that Valley City has growth in the industrial sector, but the population is down, so the growth factor creates an uphill battle for Valley City.

A water commission member expressed concerns with funding domestic use to support industry. The growth factor relates to domestic use needs. It was argued that the State Water Commission should not choose winners and losers for economic development projects.

Defining rapid growth is a moving target and the 3 percent factor was based on 2012 figures. The 2013 numbers indicate the number may need to be higher. Committee discussion included the observation that 3 percent seems arbitrary, but this is always the case when number thresholds are used. Committee discussion included the suggestion that anything over 4 percent is rapid growth, based on the ability of a political subdivision to absorb the growth in a reasonable amount of time.

The prioritization is not a law or rule but is a policy the State Water Commission can change or make an exception to at any time. The 3 percent is a guideline that can be altered. It was suggested that the policy should have enough support so that the legislature does not feel it needs to statutorily set the growth rate at 3 or 4 percent and take away flexibility from the commission.

The State Water Commission discussed the growth concept and that all cost-share has to be brought through political subdivisions. If there is a large economic development situation, the weight of multiple requests would support the project and the project would not be left out because there was not any population growth. Nothing precludes the State Water Commission from supporting a regional project. There is an expectation of more joint political subdivision applications in the future.

Committee discussion included support for incentives for regionalization and cooperation. High-priority projects have higher cost-share and this supports regionalization which generally expands water supply. Although not explicit in the prioritization, the concept is implicit in the cost-share rates. One group omitted from the cost-share policy is the tribes, and partnerships with the tribes and political subdivisions may help the tribes.

The State Water Commission discussed the objective that the rapid growth policy is for small communities with large population growth. These communities have no recourse to pay for projects and these small towns need an edge.

Committee discussion included that the Legislative Assembly asked for a methodology for the Legislative Assembly to prioritize projects. Commission discussion included that there has been a huge expansion of the water programs and there needs to be a filter for assessing projects. This is a broad filter that allows flexibility. Committee members agreed that the goal is not tie the hands of the State Water Commission because the commission needs flexibility. Commission discussion included that the State Water Commission may make exceptions, and low-priority projects could be funded and high-priority projects not funded. It was the apparent consensus that the committee was comfortable with the prioritization concept and believes it fulfills the Legislative Assembly request expressed in the bill last legislative session.

Rural Water Systems Issues

In reviewing the old cost-share policy and changes to that policy, a 60 percent cost-share grant for rural water systems was considered and received the most comments. The State Water Commission proposed a change to allow for a 75 percent cost-share grant. Commission discussion included the observation that a project receiving 75 percent grant funding could only receive 80 percent total cost-share, which leaves 5 percent for loans. However, exceptions to the policy can be made by the State Water Commission.

Committee discussion suggested that limiting cost-share to 80 percent may make the funding for the remainder through loans more complicated than necessary. Although local buyin may come from loans from the State Water

Commission, the commission wanted some of the local buyin to come from other sources available to the local entity, especially when the sources are available and should be used for appropriate projects.

Committee discussion included the suggestion that a 100 percent loan and grant from the State Water Commission provides skin in the game because the skin from the local entity is the loan and it should not make a difference if it all comes from the commission. It was also suggested that applying for funding from one entity would simplify the process by having have a one-stop shop.

A representative of the State Water Commission provided examples of rural water systems being unable to open up new areas with a 60 percent grant and in those examples, the 75 percent grant would have made it possible. This is why the State Water Commission suggested increasing to 75 percent cost-share grants. The commission believes it is important that there be some local stake in projects and the money available for projects will not go very far if there is a 100 percent cost-share.

A commission representative pointed out that there are various loan sources that could help with the local share. A State Water Commission representative suggested keeping loan programs comparable so that all could be used. The commission loans will be comparable with the State Department of Health loans and the state revolving loan fund so the proper program will be chosen based on convenience or fit with the project. It was argued that the Legislative Assembly should keep the statutory interest rate at a comparable rate.

Another proposed change to the draft policy provides that the top one-quarter of projects can be provided up to 80 percent loans for water projects that result in high rates. This quarter will be determined by comparison against those other projects submitted. There are roughly 80 projects submitted and the projects will be divided into peer group, and the top quarter in each peer group would be eligible for the 80 percent. What is the top quarter is determined by the State Water Commission, which provides for flexibility. It would be difficult to categorize based upon statewide cost when there are over 240 cost-share requests and it would be difficult to implement on a statewide basis.

Affordability is considered when there is a lack of water supply and it is factored in when determining grants and the ability to pay for loans. The factors for consideration for water system expansion include affordable and sustainable water rates as determined by the Chief Engineer. Leaving this determination to the Chief Engineer makes the State Water Commission able to calculate the rate over the appropriate amount of users. Affordability is important to each rural water system as end users become more and more difficult to reach, it becomes less affordable. Some end users are willing to pay and some are not. The policy provides that if the people at the end are willing to pay, then there may be a 75 percent grant. This does not guarantee 100 percent service, but helps get in those areas at the end of the line.

Tribal Issues

The Three Affiliated Tribes, the Standing Rock Sioux Tribe, the Turtle Mountain Tribe, and the Spirit Lake Tribe took issue with use of the term local sponsor. The term does not include a tribal entity and it was argued that the term should include the tribes. The tribes want their projects to be judged like any other project. The committee was informed that the rural water users have endorsed tribal projects.

The Turtle Mountain Tribe provided information to the committee on the United States Highway 43 water project. The tribe is the only group that can provide water in the area of the United States Highway 43 corridor. The water projects the tribe wants to do are serving both tribal and nontribal members, and it was argued that it is unfair not to be able to get state cost-sharing.

The State Water Commission does not cost-share with tribes because tribes are sovereign nations and have historically have had access to federal funding, including operating and maintenance. Recently, federal funding has been reduced. There is $4 million for fiscal year 2014 from the Bureau of Reclamation for the tribes. For State Water Commission funding to be used on tribal projects, the tribe needs to enter a cooperative agreement with a political subdivision because the State Water Commission is required by law to work with political subdivisions. This kind of cooperative project has been done with the Three Affiliated Tribes working with McKenzie County.

Land Purchase Issues

The major cost to flood retention projects is the purchase of the land. There would likely not be any retention projects if there was not any cost-share for land purchases. The policy allows for the purchase of land for flood retention projects and it does not allow for the purchase of easements. Most projects do not include money for purchase or easement because it is difficult to know whether the transfer is a good deal. When negotiations are neighbor-to-neighbor, there is one set of negotiations, but if there is state or federal money involved, the negotiations

take on a different tenor. It was argued that the allowance for cost-share for purchasing land is an exception to a general rule and should not be expanded to include easements.

Litigation Issues

There is no change to the policy as it relates to litigation and the State Water Commission may defer payment, but the policy does not require the commission to defer payment. Sometimes the State Water Commission needs to fund a project to get into litigation to resolve the issues.

Conclusion

Committee discussion included that the joint meeting provided for good dialogue and valuable interaction. The meeting with the State Water Commission was productive and properly timed. The committee consensus was supportive of the policies presented at the meeting. Members generally were comfortable with the cost-share policy and prioritization schedule. Other members had concerns but supported the prioritization schedule and cost-share policy. It was noted that both are working documents, and there may be changes in the future. The State Water Commission was commended for completing the requested policy and schedule. The committee approved the cost-share policy attached as Appendix B.

The State Water Commission approved the cost-share policy on September 15, 2014, with an effective date of October 1, 2014. Most are satisfied with the policy except for some rural water systems and the city of Grand Forks. Certain rural water systems and cities urged that all water supply projects should be eligible for up to 75 percent grant and loans should be available from the State Water Commission for the remainder. It was argued that all project costs should be eligible for reimbursement, except operations and maintenance costs. The committee was informed that ineligible items in the cost-share policy lower the grant-to-loan ratio. It was argued that rate comparisons are not a fair way to determine affordability. In addition, water projects for industrial growth should be eligible and considered for high-priority projects. It was argued that there is enough money to have a 75-to-25 grant-to-loan ratio.

Grand Forks had requested $77,379,000 for a regional water plant. The State Water Commission provided a $9.6 million grant and a $52 million loan. The Grand Forks project is a moderate-level priority. Although Grand Forks is impacted by sulfates from the Devils Lake outlet when Grand Forks uses Red River water, Grand Forks' primary source of water is the Red Lake River. There was a higher cost-share with Fargo for the sulfate reduction of a 50 percent grant because Fargo obtains water from the Red River and the Sheyenne River is a backup.

MUNICIPAL WATER PROJECTS STUDY

The committee was informed that the municipal water supply infrastructure in the state is aging, and cities cannot pay for the rehabilitation. It was argued that there may need to be more state money for rehabilitation. The committee received testimony from certain cities across the state. For example, the committee was informed of the importance of state investment in strategic water infrastructure needs in Grand Forks.

The committee received testimony on the drinking water state revolving loan fund and was provided a priority list for the fund. The average loan is from $20,000 to $66,000. The repayment of previous loans and bonding is deposited in the fund. The revolving loan fund could provide $700 million in loans for five years. The priority list contains 168 projects with a total cost of approximately $680 million. The entities on the list update the cost of the project every year and stay on the list in the same order after an update. The list is an estimate of costs and is not a list of projects that are ready to be built.

Grand Forks intends to build a new regional water treatment plant that is a regional project to be used for the next 100 years. The new plant will provide 20 million gallons of water each day. The present plant provides 16 million gallons of water each day. The summer demand is 12 million to 14 million gallons of water each day. The usual demand is 8 million gallons of water each day. Because the regional water plant is a multigenerational plant, there needs to be a financing structure to spread the debt out over multiple generations. The regional project plan includes East Grand Forks and financial involvement from Minnesota has to be worked out.

The water tower in Park River was built in 1932 and holds 50,000 gallons. The cost to fix it is around $900,000. A new 250,000-gallon water tower would cost $2.7 million. Although 50 percent cost-share was provided, 75 percent would have been preferred. The state revolving loan fund provides for the remainder, and this is being paid for with a $12 per month increase in water rates. It was argued that water infrastructure in cities is deteriorating, and the state should fund infrastructure needs with a 75 percent grant.

The committee was informed that there needs to be a treatment plant update in Minot for the Northwest Area Water Supply (NAWS) Project. The water treatment plant is critical because the average water usage in 2010 was 4.5 million gallons per day and now is 6.2 million gallons per day. The city cannot take the 12-million-gallon basin out of service

to repair because that only leaves a 6-million-gallon basin. There needs to be an improvement in the plant in Minot for redundancy when repairs are needed.

The committee reviewed a bill draft prepared for Representative Robert Frantsvog that was drafted in conjunction with the Governor's office and the North Dakota Public Finance Authority to create a capital infrastructure revolving loan fund of $100 million from the strategic investment and improvements fund for rapid growth communities to build infrastructure, including sewer, storm water, and drinking water supply projects. The bill draft was not considered for approval by the committee but was reviewed because it directly related to the study of the funding of municipal projects.

Committee discussion included that the bill draft should address how the growth rate is determined. The committee was informed that the bill draft is a work in progress and needs a few changes, including lengthening the term of the loan.

Conclusion

The committee does not make any recommendation regarding the study of municipal water projects.

WESTERN AREA WATER SUPPLY AUTHORITY STUDY

Testimony and Discussion

This interim committee received reports on WAWS from the Independent Water Providers and WAWS and information on water usage, rates, and market share and the ability to maintain the payment schedule.

History of Funding

The committee reviewed a financial flowchart for the WAWS Project (Appendix C). The flowchart contains the loan and grant funding for the past, present, and requested for the future.

The state has provided $229 million, with $110 million in loans provided by the 2011 Legislative Assembly to WAWS. The 2011 funding was used to build transmission lines, reservoirs, pump stations, and depots. In the 2013 Legislative Assembly, $119 million was provided, $40 million in loans, and $79 million from the State Water Commission--$39 million through grants and $40 million through a loan. This was used for water treatment plant upgrades and to provide water to rural residents. WAWS did not use all the $79 million provided. The plant in Williston was at 10 million gallons per day and was brought up to 14 million gallons per day and will be at 21 million gallons per day by November 2014. WAWS will request a $30 million loan from the 2015 Legislative Assembly. The total amount that will be requested through 2017 is $349 million. The $30 million loan that will be requested would be from the resources trust fund. The $30 million loan requested can be paid because of the prepayment of debt and will be serviced through industrial sales. It is anticipated that any future additional loans would be difficult to service.

WAWS already has an 80 percent loan-to-grant ratio. The 75 percent grant request next biennium will get WAWS total funding closer to 50 percent loan and 50 percent grant. The grants and loans requested by WAWS will be in the Industrial Commission's 2015-17 budget request. WAWS will live within the budget even if it does not receive the total amount requested. Committee discussion included support for a 75 percent grant and 25 percent loan for all rural water projects.

Sales and Payments

The Industrial Commission has oversight of the money earned from industrial water sales and receives monthly reports. The commission approves additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales. The commission may revise loan payments, if cashflow is insufficient to meet debt requirements. The commission will provide for the reimbursement of WAWS for industrial water depot capital improvements and the costs of delivery of potable water sold at industrial water depots and lateral lines at a cost no greater than the participating member or submember entity rate at the location of the depot or lateral line. The commission approves water rates for industrial sales, generally on an annual basis. The commission has reviewed and adopted a rate schedule that was developed and proposed by WAWS. The determination of rates is determined by looking at cost and is not a comparison to other rates in other parts of the state.

The committee received testimony from a representative of the Bank of North Dakota on WAWS debt service with a break-even analysis. The level of priority of debt service starts with the highest priority of Public Finance Authority state revolving fund loans, then goes to participating members' other debt, then goes to baseline 2010 industrial water sales revenue requirements, and then to state-guaranteed loans. The state-guaranteed loans are repaid in the order of Bank of North Dakota loans first, followed by the general fund loan, and followed by the resources trust fund loans. The state-guaranteed loans total $150 million. The total debt is $190,220,825. Annual break-even sales are based on a 79.9 percent profit margin. The first big year of debt service is in 2015 with annual payments of $23,370,796

needed, with sales of $29,250,058 needed to meet the payments. The annual payments remain near $21 million until 2020, and the break-even sales remain near $26 million until 2020.

The committee received testimony on the payment of debt service on outstanding state guarantee debt from WAWS industrial water sales. There has been a prepayment of approximately $8.6 million on the guaranteed loans and all interest is current as well. WAWS is ahead of schedule and has made prepayments and the revenue forecast is ahead of projections. In short, things are going as planned or better than planned.

Through August 31, 2014, WAWS has had industrial sales totaling $32,851,816 and has dispersed $26,706,557 from these industrial sales revenues to make payments as outlined by law. The Industrial Commission has approved capital projects that will be paid from industrial sales over the next several months and these projects total $2,373,917. The Industrial Commission approved capital project improvements to two fill stations and approved the movement of the Crosby depot. Other expenditures included signage and the design for water storage in McKenzie County.

Projections for 2017-19 are difficult to make because it is difficult to anticipate the need. There has been no slowdown in the oil development activity in western North Dakota, but there may have been some stability. However, with more wells, there will be an increase in the need for water. WAWS expects $30 million to $34 million in sales in 2015.

Depots

There are 9 operational WAWS depots, 2 planned, and 1 available for a total of 12. All industrial water sales are metered. Not as many depots have been built as were planned because WAWS is waiting for additional need to develop. In addition, WAWS has been working with the Independent Water Providers and WAWS did not build a depot at the 29 Mile Corner because the area was being served by Independent Water Providers.

Depot maintenance is a constant issue, especially due to wet conditions and upkeep is constantly needed. The cost to build a six-lane depot is approximately $1 million. It was reported the depots cash flow well.

The committee was informed that it is difficult to build the Ray and Tioga depot because people do not want a water depot near their property. The depot will be built after zoning is approved. The committee was informed that water was not available at the Ross depot, the Crosby depot needs to be moved out of town, and the use of the Second and Sixth Street depot sites in Williston is declining because access is difficult.

The authority is trying to maximize potential, and companies are looking at pipeline sales instead of depots. WAWS has long-term contracts to provide water through pipelines to certain oil companies. The water is provided to these entities with no capital cost to the authority because the facilities are built by the partner. The partners have priority for industrial water over other users.

Water Use

Population is increasing and the need for water is increasing. In 2011 the projections were for 48,000 in peak population and the plan in 2014 is for a peak population of 160,000. Based on housing studies, the 21 million gallons per day in the future may have to be used for domestic use and industrial sales will have to slow.

Water depot use rapidly increased from 2010 to 2012 and was leveling off in 2013. Water use in the Bakken is not increasing as much as in the past and appears to be leveling off at 18,000 acre-feet to 20,000 acre-feet per year. An acre-foot is 325,851 gallons. The average of water used per frac is leveling off at seven acre-feet.

Industrial water sales include use for oil production, exploration, and fracturing. Maintenance water will be needed for the next 30 years. This amount of water is small at present but is consistent. Frac water usage and maintenance water usage are inversely proportional over time. The committee was informed that there is not any expectation of any large developments as a result of recycling water. There is some recycling of water and the technology is improving, but the cost and logistics do not make it as feasible for use as freshwater.

There is a tremendous variability on the amount of water used each day from zero to 900,000 gallons. The water depot use can be driven by external factors like the number of rigs and the condition of roads. Water usage levels off between March and June and increases dramatically after June. The leveling off from March to June is due to load restrictions for roads and most load restrictions are removed by the end of June. The committee was informed that sales were large in March, but there was a slowdown in June because of the high turbidity in the river. Some depots needed to be shut down. The levels of turbidity were the highest levels seen in recorded history at the water treatment plant. The Missouri River at Williston is dirty in the spring because of the water entering from the Yellowstone River. Some of the $119 million available to WAWS in 2013 is being used to provide pretreatment for the water treatment plant to reduce turbidity. In addition, there was a slowdown in July because of domestic needs for more water.

Rates

WAWS sets domestic rates to member entities. The rates for industrial sales need to be approved by the Industrial Commission. Twenty percent of the rate is used to get the water out to the depot. If industrial rates are $20 per thousand gallons, then $4 of that is used for the operation and maintenance. Depot rates are dynamic and vary from $12 to $20 per thousand gallons and the price varies from location to location based on proximity and access. In addition, there is seasonable variability and the rate may vary based upon whether the water is heated or not heated.

The WAWS Project was based on industrial sales paying for the project. Because there is buildout, there may be an opportunity to collect some revenues from residential users. However, WAWS is a wholesaler for residential use and WAWS provides water to the doorstep of communities and the community still needs to distribute the water within that community. Originally, WAWS was going to run all of the rural water systems within the area. WAWS has stayed a wholesaler and the rural water systems have operated and maintained the lines. WAWS is building projects and turning over the projects to the rural water system when the projects are complete. The committee was informed that residential rates in WAWS communities are the highest rates in the state.

Committee discussion included a suggestion that WAWS may be unfair to other rural water systems because they have a different grant and loan policy. To the contrary, it was argued that WAWS is a unique system like NAWS and the Southwest Water Authority and all three have separate operating models and are working. WAWS is a hybrid local and state system. It is locally led and the state provides money with some of it being repaid. The committee was informed that the expenditures for WAWS are consistent with the water policy for rapid growth areas.

Independent Water Providers

The Independent Water Providers, presented testimony to the committee on WAWS. The committee was informed that the WAWS Project was intended to be a $150 million project, and today is headed toward being a $349 million project. The Independent Water Providers opposed the WAWS Project for three reasons. First, the market already fully served the water needs through the private sector and some political subdivisions. Second, there is more competition as time goes forward. In 2011 there were 9,400 acre-feet of permits for oil and gas development and now there are at least 46,000 acre-feet approved and commencing, and this is four times what is being used. Third, the oil and gas industry will find a new way of managing water.

In the 2013 legislative session, Senate Bill No. 2233 provided $119 million for WAWS to build a trunk line, but it was argued that the trunk line turned into a spider web. The Independent Water Providers objected to this expansion. The Independent Water Providers thought Section 19 of Senate Bill No. 2233 would limit industrial growth. Last legislative session, the Independent Water Providers thought that WAWS was going to focus on people instead of growing industrial sales. Senate Bill No. 2233 did this by requiring the Industrial Commission to manage the cashflow and requiring any expansion to go through the State Water Commission. It was argued that the language which provides "[t]he state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production" was making the State Water Commission the gatekeeper. The commission has delegated this duty to the State Engineer, and the committee was informed that the State Engineer reads the section to require approval, instead of evaluating for approval or disapproval, of the expansion of industrial water sales to the oil and gas industry.

The WAWS Project was paid for by depots sales and the Independent Water Providers objected because of government competing with the private sector. The model was risky at that time because 70 to 80 percent of the water was being provided by the private sector with the remainder provided from communities with water depots.

WAWS has grown from 12 percent of the market in 2011 to 21 percent today. WAWS is concentrated in Williams and McKenzie Counties and has 41 percent of the market in those locations. WAWS in the past has suggested that 20 percent of the market is what is needed.

Over-Appropriations

The committee was informed that the civil penalty for over-appropriation of water was raised from $5,000 a day to $25,000 a day. The purpose of the civil penalty is to try to take profit out of the over-appropriation. Civil penalties are usually settled through a consent agreement. The consent agreements take the amount of over-appropriation from the next year's appropriation. One company--Power Fuels--paid a civil penalty of about $800,000 through a consent agreement. Permits will be pulled for future offenses after a consent agreement. Once the State Water Commission went after profits, there has been a substantial effect on over-appropriation.

There have not been any criminal actions taken against over-appropriators. Most of the state's attorneys in northwest North Dakota are overloaded with work and may not have the scientific background needed to prosecute an over-appropriation case. However, the State Water Commission will be conducting continuing education for law enforcement to enforce over-appropriation laws.

OTHER AREAS OF STUDY

Southwest Water Supply Project

The Southwest Water Authority covers 12 counties and works with Perkins County in South Dakota to provide rural water. The territory goes south to the South Dakota line and west to the Montana border and includes every county in the west river area except Sioux County. The Southwest Water Authority provides 5,332 rural residents water.

The municipal, rural, and industrial funding had a huge impact on the Southwest Water Project and without it, construction would have slowed or stopped. In addition, the resources trust fund has also been a major source of funding. The Southwest Water Authority receives $4 million in income from water depots for industrial use. There is not any concern with competing with the private sector because there is no competition because the naturally occurring water is of such poor quality.

The Southwest Water Authority was a hybrid in matters of funding for rural water projects. The major hurdle is to provide water that is affordable to a few customers. The funding needs to be equitable and include a system of grants, loans, and other repayment options.

Committee discussion pointed out that the legislature has been criticized in the past for being forward-looking, for example when the legislature invested in the Southwest Water Project and made United States Highway 2 four lanes to the Montana border. It was argued that both examples were good ideas and forward-thinking.

The committee received testimony on the transfer of the Southwest Pipeline Project to the Southwest Water Authority. The project is still being constructed, and more money is being spent than is being returned on repayment. The authority makes money through water rates that repay capital expenditures, operation and maintenance, and repair and extraordinary expenses. In short, the money is used to cover expenses, pay off capital, and save money for the future. There is approximately $11 million in reserve for future expenses.

There is no expiration of the capital repayment. The amount of repayment was based on the ability to pay, not the amount borrowed, so the amount of repayment is forever. There was no thought of transfer to the authority when the authority was created. The transfer of ownership is a different issue than the capital repayment.

Northwest Area Water Supply Project

NAWS is an empty pipeline from Lake Sakakawea to Minot. The committee was informed that expansion of 1,200 potential customers around Bottineau and Lake Metigoshe and oil development northwest of Bottineau will need NAWS water.

Biota and depletion are the major issues with using the pipeline. Downstream states do not like depletion. Canada objects Missouri River water going to Canada. Canada does not approve of taking water across the Continental Divide because of biota concerns. NAWS is in court with Canada. The project does not totally treat the water before it crosses the continental divide. The committee was informed that fully treating water at the beginning of the project would, on a technical basis, address biota concerns. However, the state has not been successful since the 1930s in taking water across the Continental Divide.

The state has been in legal controversy with Manitoba and the Canadian government over the NAWS Project for over a decade. There is federal involvement with the NAWS Project, so there is the involvement of federal agencies and federal law. The NAWS Project is in federal court because there is federal involvement in the project. The committee was informed that something definitive on NAWS will most likely not be available before the 2015 legislative session. It was estimated that the environmental impact study will be presented to the court in March 2015. The committee was informed that by the end of 2014, there could be a record decision for the NAWS Project.

Lake Sakakawea

Lake Sakakawea is the main recreation area in western North Dakota. It was argued that as people move in as a result of oil development, the needs of those people for recreation need to be accommodated. There is a great opportunity for recreational use around Lake Sakakawea, which has been lost due to federal management of lands surrounding the lake. For instance, there is not a hotel on Lake Sakakawea. Committee discussion included urging the Army Corps of Engineers to work with the state to provide access through recreational sites, campgrounds, boat ramps, and access points.

Fargo Diversion Project

The committee received testimony on the Fargo-Moorhead diversion project. Oxbow was catastrophically flooded in 2009. The ring dike around Oxbow was included in the project and is a mitigation factor. Oxbow has flood protection, but it is not certified to the 100-year level by FEMA. Early on in the process the plan was to buy out homes in Oxbow and Hickson. There was resistance, so a levee alternative was developed with the Army Corps of

Engineers. The levee project around Oxbow has started because of an advance agreement with the Army Corps of Engineers for advance construction costs being credited to the federal portion of funding. The levee has provided stability as to home prices and for the tax base for the Kindred School District. Committee discussion included that to date, Hickson and Bakke have not flooded and Oxbow now has substantial protection. It was argued that the flood protection in Oxbow is good for 10,000 years if the project in Fargo-Moorhead does not go through.

Committee discussion included the suggestion that it should be in writing that Fargo will pay for the levee if there is not federal funding. It was argued that the state should not be responsible for these costs. The wording in the law was intended to protect the state from the federal government.

The committee was informed that the authority may spend more from the federal funds at first as long as there is the appropriate cost-share at the end. Federal funding is always up to Congress, and if there is no federal funding, the cost of the levee could be a local responsibility. It was argued that the law indicates prior to authorization, state money may be used only for the levee, not the channel.

Money from the Cass County sales tax was used for levy work in small communities and for retention. There are 96 water retention projects that encompass 100,000 acres. The Fargo-Moorhead Diversion Authority supports retention and distributed storage, but it is never a replacement for the diversion and the storage is not part of the diversion project. Retention is supported because it lessens the frequency of which the operation of the project will be required. With the retention projects, it becomes less likely there will be backup of water on other property. Retention projects also lessen the chance of the need to use insurance by agricultural producers. The potential use of the project goes down with retention projects, but it does not affect the cost of the diversion project.

The total amount of acres that will need to be purchased is around 8,000 acres. Around 2,000 acres have been purchased and some has been rented back to the producer. Not all of the 2,000 acres are within the area needed because the purchase of units of land sometimes does not coincide with the land needed for the project. The process of purchasing land started in the fall of 2013 and will most likely pick up again in the fall of 2014 when the harvest season is over.

The authority will pay taxes on the land and has hired a land management company to take care of the land. The authority is not in the land ownership business and most likely will sell the land that is not needed in the footprint.

Agricultural mitigation will provide financial compensation to landowners. It is a complex issue for agricultural producers to be provided a remedy if they will not be qualified for crop protection because of the project. Producers are waiting for funding for the project. A consultant has been hired, and the goal is to come up with amounts that are available for farmers.

Other Flooding Issues

The largest water-related issue for Grafton is permanent flood protection. There is a federal project in place but no funding. The city will go ahead on flood protection without federal funding, if possible. The federal law that takes away the subsidy from the federal flood control insurance program has increased costs from $1,000 to $4,000 to $6,000 per home, per year in Grafton. This has caused sales of homes to plummet. The flood protection is needed to get properties out of the 100-year flood zone designation so there is not a flood insurance requirement.

The flood control project has been in the process for 30 years, and Grafton has waited 10 years for federal funding. Federal regulations have changed over those time periods and the city cannot afford to wait, especially since the federal government is not in the financial condition to help. The cost of the diversion plan is $45 million. The Army Corps of Engineers says a diversion is the most viable, although a levy of 22 feet would provide for a 100-year flood protection.

The national flood insurance program passed in July 2012 and the bill stabilized the flood insurance program for five years. About 20 percent of all policyholders were phased out. These properties included second homes, business property, and grandfathered property. Grandfathered property received the rate that the previous owner had. This caused a problem with real estate markets because flood insurance increased at the extremes from $500 per year to $25,000 per year and some homes became unsalable. New legislation passed recently is the Homeowners Flood Insurance Affordability Act and it allows the assumption of current policy by the new buyer by reinstating the grandfather procedures. The rates will increase but will be affordable. The rates for flood insurance will slowly increase. The debts in the program arose from the Katrina and Sandy hurricanes. The program is becoming more actuarially sound, but it will take time to pay off the debt.

There have not been any private insurance alternatives for federal flood insurance in the past, but new legislation has provided mechanisms for a private market and some is available in Florida. An actuarial review of a program

shows it probably is not something that could be done in this state. The program would be insolvent with 10,000 policyholders. North Dakota benefits from the national insurance program by receiving three-and-one-half times the amount paid in premiums for claims.

PROHIBITION ON RESOURCES TRUST FUND FOR STATE WATER COMMISSION

The committee considered a bill draft to prohibit the principal and income from the resources trust fund from being available to the State Water Commission, or any employees or appointees of the State Water Commission, for wages, salaries, and operating expenses unless otherwise provided by law.

The State Water Commission administrative budget has been paid from the general fund in the past and more recently legislative appropriations for that purpose have shifted back and forth between the general fund and the resources trust fund. The committee was informed that the State Water Commission would like the resources trust fund to be used to fund projects and not commission administration.

The committee amended the "unless otherwise provided by law" language into the bill draft because the committee was informed that there are other sections of law that allow salaries and operations expenses to be paid by the resources trust fund for the Southwest Pipeline Project, NAWS Project, and the Devils Lake outlet. For example, the operating expenses for the Devils Lake outlet include electricity.

WATER TOPICS OVERVIEW COMMITTEE DUTIES BILL DRAFT

The committee considered a bill draft to remove areas that already have been studied from the statutory duties of the Water Topics Overview Committee. Section 54-35-02.7, which provides for the Water Topics Overview Committee, has references to the studies that were completed this interim, and the section must be amended to avoid having to duplicate the studies in the future. The bill draft provides that the committee may work collaboratively with the State Water Commission and may meet with the State Water Commission.

RECOMMENDATIONS

The committee recommends Senate Bill No. 2058 to prohibit the principal and income from the resources trust fund from being available to the State Water Commission for wages, salaries, and operating expenses, unless otherwise provided by law.

The committee recommends House Bill No. 1061 to remove topics that already have been studied from the statutory duties of the Water Topics Overview Committee.

MOUSE RIVER REPORT

The committee received a report on the Mouse River enhanced protection plan. The city of Minot looked at the cost-savings of reducing protection from 27,000 cubic feet per second to the 100-year flood level of 10,000 cubic feet per second, and the city only saved 5.6 percent of the cost of the project, so it makes sense to build to the higher level. The city looked at phasing in the flood protection plan. The engineers created 14 phases with a priority of keeping United States Highway 83 open. Minot has worked closely with the Souris River Water Resources Joint Board to determine which phase is constructed at which time. If all the money was available, it would take 11 years to 12 years for the Mouse River enhanced flood protection plan to be completed solely in Minot.

There is a one-half cent sales tax in Minot that raises $6 million to $7 million per year for flood protection. The current state cost-share is 60/40, and if the 40 percent is all local, the local entities cannot afford the flood protection so a 75/25 split is preferred.

The State Water Commission works with Canada through the International Joint Commission and the State Department for management of the Mouse River. The State Water Commission is trying to open the agreement with Canada because of changing hydrology, but this will take time because it is a large undertaking and has international protocol that needs to be followed. The plan with Canada was opened up when the Rafferty and Alemeda Dams were built and the plan is to provide a 100-year protection for snowmelt events. International agreements limit opening the flow through the wildlife refuge. In the last flood, the catastrophic rains overwhelmed the flood control structures for the Mouse River.

Downstream ranchers had concerns with the flood control project. Increased waterflows have helped with flooding but push too much water downstream too fast in the view of downstream ranchers. The main concern is that flood control costs ranchers money by damaging hay crops. Although, from a basin perspective, the urban areas need to have flood control first and the flood management plan for the highest recorded flood is better for river management, downstream ranchers are negatively affected. Almost all of the hay production in the meadows by the river was lost from 2011 through 2013. The water stayed on the land too long. If water is received early, it is an advantage, but it

needs to be removed. The flows need to be reduced by late May for hay production. If water is not drained, the ranchers deal with weeds and no hay. It was argued that because the flooding deprives ranchers of hay and their livelihood, ranchers should be compensated for losses because of the flood control.

Ranchers offered a suggestion for moving the water through quicker. The land is flat on the south side of the J. Clark Salyer National Wildlife Refuge and there is a four-inch drop in one mile. It was argued that dredging would help, but the United States Fish and Wildlife Service will not dredge.

The committee was informed that the 1986 plan allowed for higher levels of water, which created more erosion, cattails, sediment, and pools of water. The problem is a lack of drainage and that would be provided if the old channel was opened up.

It was argued that the Canadian releases are indiscriminate. A rancher argued that it would be useful to be told before the release of water to allow the removal of hay on the land. It was argued that notification of water releases would be especially helpful later in the season and there should not be releases in July. In addition, better forecasting by the Canadians would be helpful.

It was argued that water levels cannot be managed by dams if the dams are kept full, and Canada keeps its dams full and Lake Darling is kept full. It was argued that the dams are not managed for rain events.

BOARD OF UNIVERSITY AND SCHOOL LANDS STUDY OF LAND SURROUNDING LAKE SAKAKAWEA AND LAKE OAHE REPORT

The committee received a report on the outcome of the study by the Board of University and School Lands of the options to address the concerns of landowners adjacent to land under the control of the Army Corps of Engineers surrounding Lake Sakakawea and Lake Oahe. The board's study provided seven options for consideration:

1. Status quo.
2. Return land above the high-water mark to the original owners.
3. Return land above the high-water mark to the state of North Dakota and the state manages the land.
4. Return land above the high-water mark to the state of North Dakota and the tribes owning adjoining land and each would manage their own land.
5. Return the land above the high-water mark to the state of North Dakota and the tribes owning adjoining land and the state, tribal government, or a local government manages the land.
6. Have the Army Corps of Engineers retain ownership of the land above the high-water mark but have the state, tribal government, or a local government manage selected portions of the land, while the corps manages the balance of the land.
7. Transfer the land above the high-water mark to the state of North Dakota and the state would transfer the land to preferential lease holders.

SWC WATER PROJECT PRIORITIZATION GUIDANCE CONCEPT

Projects submitted during the project planning inventory process[1] that meet SWC cost-share eligibility requirements will be considered for prioritization. Projects that do not meet local cost-share match requirements, (per SWC cost-share policies), will be dropped to the next lowest priority category. Ineligible projects will be diverted toward alternative funding sources.

ESSENTIAL PROJECTS *(No Priority Ranking)*

- Agency operational expenses.
- An imminent water supply loss to an existing multi-user system, an immediate flood or dam related threat to human life or primary residences, or emergency response efforts.
- Existing agency debt obligations.
- SWC project mitigation.

HIGH PRIORITY PROJECTS

- Federally authorized water supply or flood control projects with a federal funding appropriation.
- Federally authorized water supply or flood control projects that do not have a federal appropriation.
- Corrects a lack of water supply for a group of water users or a violation of a primary water quality condition in a water supply system.
- Addresses severe or anticipated water supply shortages for domestic use. (Three-year avg. population growth > 3%)
- Protects primary residences or businesses from flooding in population centers or involves flood recovery property acquisitions.

MODERATE PRIORITY PROJECTS

- Dam repairs, reconstructions, or removals/breaches.
- Expansion of an existing water supply system.
- Levee recertifications, floodwater retention, emergency action plans, or flood mitigation property acquisitions.
- Irrigation system construction.
- Snagging and clearing.
- Bank stabilization.

LOW PRIORITY PROJECTS

- Studies, reports, analyses, surveys, models, assessments, mapping projects, or engineering designs.
- Improvement of a water supply system.
- Construction or improvement of rural flood control drains, ditches, and diversion channels, or outlets.
- Recreation projects.
- Individual ring dike constructions.

Information provided by project sponsors regarding project benefits will be considered in the prioritization process.

Footnotes

1. All local sponsors are encouraged to submit project and study financial needs during the budgeting process. Projects and studies not submitted as part of the project information collection effort may be held until action can be taken on those that were included during budgeting, unless determined to be an emergency that directly impacts human health and safety or that are a direct result of a natural disaster.

Disclaimer

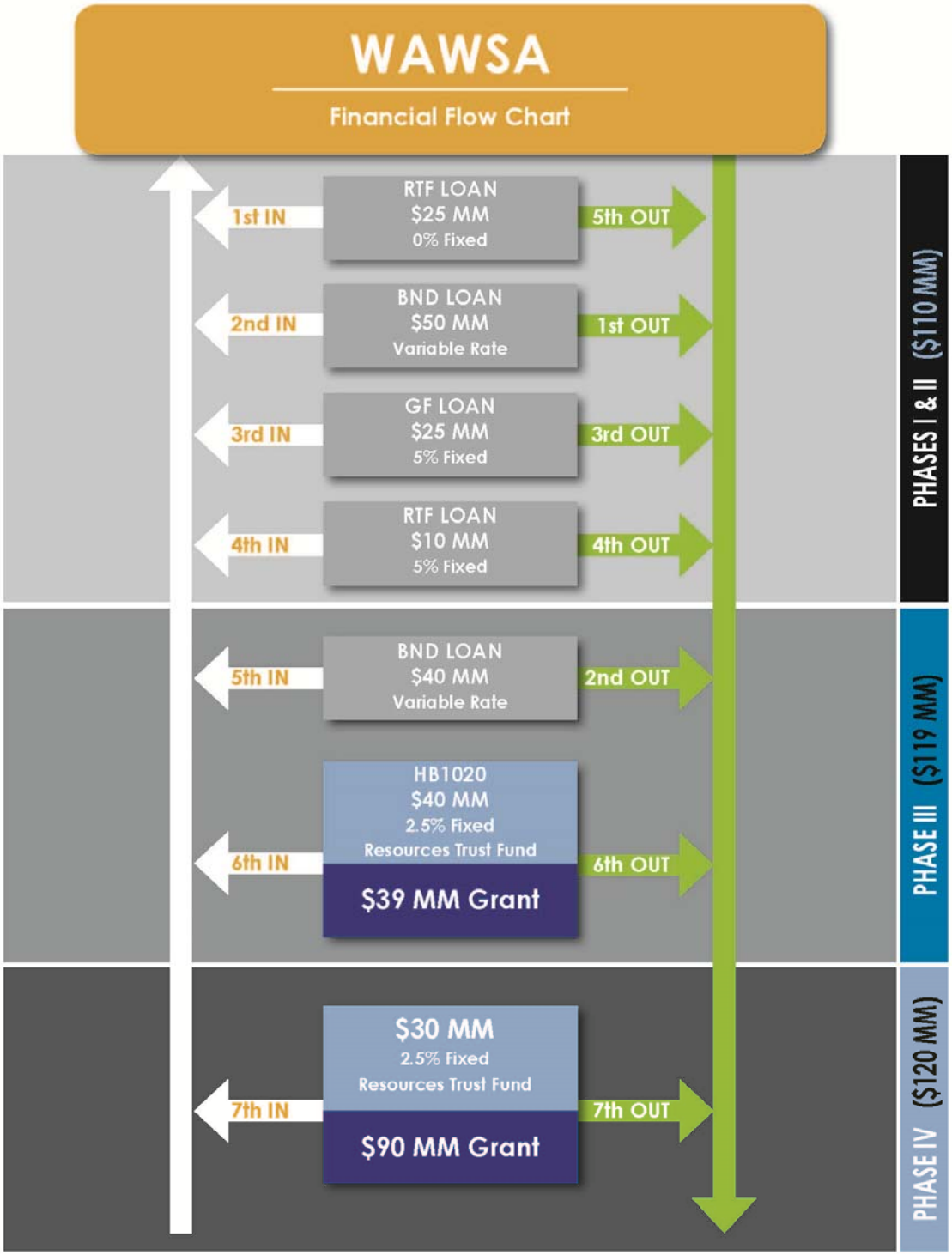
This process is meant to provide guidance for prioritizing water projects during the budgeting process that may be eligible for cost-share assistance through the State Water Commission. Interpretation and deviations from the process are within the discretion of the state as authorized by the State Water Commission or Legislature.

North Dakota State Water Commission Cost Share

Cost-Share Policy Outline	Description of Changes	Previous Policy				New Policy Effective October 1, 2014			
		Planning/ Feasibility	Design Eng	Const Eng	Const	Prelim Eng	Design Eng	Const Eng	Const
I. Definitions and Eligibility	Cost-share defined as grant or loan. Engineer services defined relating to pre-construction and construction. Programs defined as typically associated with federal initiatives.					Provides overall guidance and consistency with cost-share			
II. Cost-Share Application and Approval Procedures	Increased Chief Engineer's authority to approve cost-share and overruns.	Up to $50,000				Up to $75,000			
	Cost-share exceeding $100M, additional information requested by the State Water Commission will be used to determine cost-share.					$100,000,000			
III. Cost-Share Categories									
A. Pre-Construction Expenses	Development of feasibility studies, mapping, and engineering designs.	up to 50%	0%	NA		up to 35%		NA	
B. Water Supply Projects									
1. Water Supply Project (state funding- adds loan funding for all categories, allows combination of grant and loan up to 80%)	Addresses upgrades of water supply to SDWA primary standards or expansion into new service areas.	Used MR&I policy				up to 35%		Total up to 80% with up to 60% grant, up to 75% grant in special cases	
	Improvements and expansions of a system serving an area with 3-year ave population growth in excess of 3% per year, as determined by the Chief Engineer.	No mention in policy				up to 35%		up to 80% up to 60% grants	
	Water treatment improvements that address impacts from other State Water Commission projects. Grant based on level of impact from the State Water Commission project.	Primarily Devils Lake Impacts				Primarily Devils Lake Impacts			
	Provides special consideration for improvements in service areas where the anticipated cost per user each year divided by the average annual median income per user is in the top quartile of its peer group water systems (large city, small city, and regional) as determined by the Chief Engineer.	No mention in policy				up to 80% loans			
	Addresses extraordinary repairs or replacement of a water supply system due to damages from a recent natural disaster.	Partially addressed for Missouri River intakes				up to 80% loans			
2. Municipal, Rural And Industrial Water Supply Program	Federal Funding - no changes - Prelim Eng not funded.	0%	up to 75%			0%	up to 75%		
3. Drought Disaster Livestock Water Supply Project Assist.	Program uses state funding in support of a federal initiative, program is defined in Admin Code.	Implemented during droughts				Program mentioned in policy to be implemented during droughts			

North Dakota State Water Commission Cost Share

Cost-Share Policy Outline	Description of Changes	Previous Policy				New Policy Effective October 1, 2014			
		Planning/ Feasibility	Design Eng	Const Eng	Const	Prelim Eng	Design Eng	Const Eng	Const
C. Flood Control Projects									
1. Flood Recovery Property Acquisition Grant Program	Flood damage has occurred. Property needed for construction of flood protection.	up to 75%				up to 75%			
	Flood damage has occurred. Property needed for conveyance.	up to 60%				up to 60%			
2. Flood Protection Program	Provide long term flood reduction benefits. (Needed for preventing future damage) SWC may lend portion of local share based on demonstrated financial need.	up to 50%	0%		up to 60%	up to 35%		up to 60%	
	Provide long term flood reduction benefits with Federal participation (Needed for preventing future damage.) SWC may lend portion of local share based on demonstrated need.	up to 50%	0%		up to 50%	up to 35%		up to 50%	
3. FEMA Levee System Accreditation Program	FEMA requirement to accredit the levee system for flood insurance mapping purposes.	up to 60%			N/A	up to 60%			N/A
4. Dam Safety and Emergency Action Plans	Addresses dam safety issues. SWC to lend portion of local share based on demonstrated financial need.	up to 50%	0%		up to 65%	up to 35%		up to 75%	
	EAP for high or medium/ significant hazard dam. Dam break model only on high hazard.	Up to 80%				Up to 80%			
5. Water Retention Projects	No Federal participation.	up to 50%	0%		Up to 65%	up to 35%		up to 60%, expanded to include property	
	Federal participation.	up to 50%	0%		Up to 65%	up to 35%		up to 50%, expanded to include property	
6. Snagging and Clearing Projects	Snagging and clearing on watercourses.	up to 50%	0%		Up to 50%	up to 35%		up to 50%	
D. Rural Flood Control Projects									
1. Drains, Channels, or Diversion Projects	Cost-share for drains, channels, or diversion projects.	up to 50%	0%		up to 45%	up to 35%		up to 45%	
		$500,000 per biennium cap				biennium cap removed			
2. Individual Ring Dike Program	Cost-share up to $40,000, combined NRCS & SWC funding capped at 80% of eligible costs.	up to 50%	0%		up to 60%	up to 35%		up to 60%	
E. Recreation	Water based recreation, typically associated with dams.	up to 50%	0%		up to 40%	up to 35%		up to 40%	
F. Irrigation	Costs associated with principal supply works.	up to 50%	0%		up to 50%	up to 35%		up to 50%	
G. Bank Stabilization	Protects public infrastructure or facilities.	up to 50%	0%		up to 60%	up to 35%		up to 50%	


WAWSA
Financial Flow Chart
1st IN
RTF LOAN
$25 MM
0% Fixed
5th OUT
2nd IN
BND LOAN
$50 MM
Variable Rate
1st OUT
3rd IN
GF LOAN
$25 MM
5% Fixed
3rd OUT
4th IN
RTF LOAN
$10 MM
5% Fixed
4th OUT
PHASES I & II ($110 MM)
5th IN
BND LOAN
$40 MM
Variable Rate
2nd OUT
6th IN
HB1020
$40 MM
2.5% Fixed
Resources Trust Fund
$39 MM Grant
6th OUT
PHASE III ($119 MM)
7th IN
$30 MM
2.5% Fixed
Resources Trust Fund
$90 MM Grant
7th OUT
PHASE IV ($120 MM)

WORKERS' COMPENSATION REVIEW COMMITTE

North Dakota Century Code (NDCC) Section 54-35-22 established the Workers' Compensation Review Committee. The committee is directed to review workers' compensation claims brought to the committee and determine whether changes should be made to the workers' compensation laws. NDCC Section 54-35-22 provides for a six-member committee comprised of two members of the Senate appointed by the Senate Majority Leader, one member of the Senate appointed by the Senate Minority Leader, two members of the House of Representatives appointed by the House Majority Leader, and one member of the House of Representatives appointed by the House Minority Leader. In addition to the directive to review workers' compensation claims, NDCC Section 65-02-30 requires the committee to select up to four of the elements to be included in the quadrennial performance evaluation (performance evaluation) of Workforce Safety and Insurance (WSI). NDCC Section 65-02-30 also requires the committee to receive the performance evaluation report and review any actions taken resulting from the performance evaluation report.

The Workers' Compensation Review Committee is charged, under 2013 House Bill No. 1051, with studying the WSI preferred provider program created under NDCC Sections 65-05-28.1 and 65-05-28.2 and the Legislative Management charged the committee with receiving three reports:

1. A biennial report from WSI regarding compiled data relating to safety grants issued under NDCC Chapter 65-03 (NDCC Section 65-03-05).
2. An annual report from WSI which includes reports on pilot programs to assess alternative methods of providing rehabilitation services (NDCC Section 65-05.1-06.3).
3. A report from WSI 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 WSI (NDCC Section 65-06.2-09).

Committee members were Senators Lonnie J. Laffen (Chairman), Tom Campbell, George B. Sinner and Representatives Bill Amerman, Curtiss Kreun, and Gary R. Sukut.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

CLAIM REVIEW

General Background

Workers' compensation laws in North Dakota are found primarily in NDCC Title 65. The administrative rules adopted by WSI are found in North Dakota Administrative Code (NDAC) Title 92. Article X, Section 12, of the Constitution of North Dakota, specifically addresses the state's workers' compensation agency, providing for a constitutional continuing appropriation of the workers' compensation fund for the purpose of paying workers' compensation benefits.

North Dakota Century Code Section 54-35-22 established the Worker's Compensation Committee effective August 1, 2005, and the law was originally set to expire August 1, 2007. The expiration clause was repealed in 2007. The law requires the committee to meet once each calendar quarter unless there is no claim to review. The committee operates according to the laws and procedures governing the operation of Legislative Management interim committees.

Interim History

The following is a history of the committee's activities relating to claim reviews conducted under NDCC Section 54-35-22 and legislative recommendations made:

Interim	Claims Reviewed	Bill Drafts Recommended
2005-06	11	3
2007-08	15	9
2009-10	4	7
2011-12	2	4

Claims Review Procedure

The committee began the interim by establishing a procedure and protocol for conducting its charge of reviewing claim, based on the protocol and application packet used during the 2011-12 interim. The revised application packet included a cover letter explaining the application process and eligibility requirements, a copy of NDCC Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

In order to notify the public of the committee's activities and to solicit injured employees to submit their claims for review, the committee published the application packet on the legislative branch website. The committee adopted the following procedure, which was used during previous interims to determine eligibility for a claim review and prepare the injured employee for the committee meeting at which the claim is 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 at which a claim was to be reviewed, 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 a 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 the claim reviewed by the committee:

1. Committee members had an opportunity before and during the committee meeting to review the binder of claim review information and to review the 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.

The claim reviewed was allocated a half day--either the morning or afternoon portion of a committee meeting--during which the initial review was conducted. Following the initial review, the committee retained the authority to continue to discuss issues raised as part of the review. The committee may request additional information on specific issues and reviews this information at one or more future meetings. During a committee meeting at which a claim is reviewed, a WSI representative is available to electronically access the injured employee's WSI records.

Reconsideration of Procedure

The committee received a letter from two North Dakota attorneys who practice in the area of workers' compensation law which stated that there is a root problem in the state's workers' compensation system in that there is an irreconcilable conflict of interest in having the same agency that is responsible for the health of the fund also adjudicate the claims of injured employees. The letter recommends a full-scale study of the current system with an eye toward separating the functions of protection of the fund versus adjudication of claims.

In addition, the letter identifies the following four areas of suggested changes to the state's workers' compensation laws:

1. The committee should recommend legislation that unequivocally requires WSI to follow the opinion of the treating physician of the injured employee unless WSI meets its burden of proof that a preponderance of the evidence does not support the opinion of the treating physician.
2. The committee should recommend legislation to change the preexisting condition law, to require that "the employer take the employee as he finds him" instead of the current law that allows wholesale denial of claims simply because the injured employee had a preexisting injury or condition, even if that condition is completely asymptomatic before the work injury.
3. The committee should recommend legislation that provides for a study to improve vocational rehabilitation services to return vocational rehabilitation to its workable and stated purpose to ensure that injured employees receive services to assist the employee and the employee's family in the adjustments required by the injury to the end that the employee receives comprehensive rehabilitation services, including medical, psychological, economic, and social rehabilitation.
4. The committee should recommend legislation that removes the arbitrary caps on disability benefits--two years for total disability and five years for partial disability. The injured employee should receive disability benefits for as long as the injured employee is disabled.

The letter states that the lack of injured employees applying to the committee to have their claims reviewed is not a reflection of satisfaction with the system, but is a reflection of the inability of the committee to change the outcome of the injured employees' claims.

The committee recognizes that preexisting conditions and independent medical examinations (IMEs) are ongoing issues that the committee has tried to address over the years. Although the issue of IMEs was addressed during the 2013 legislative session, the performance evaluation also addresses this issue. In addition to the WSI performance evaluation recommendations regarding IMEs, as part of status reports from WSI the committee received information regarding the issue of IMEs.

Review

The committee reviewed one workers' compensation claim.

Case Summary

The following is a summary of events of the inured employee's workers' compensation case:

- The injured employee sustained an injury to his lumbar and thoracic spine on December 11, 2012. At the time of injury, the injured employee worked as a truck driver in the oilfields of North Dakota. The injured employee received medical treatment on the date of injury.
- On January 16, 2013, the injured employee's WSI claims adjuster had a telephone conversation with the employer, which indicated the employer offered the injured employee a dispatch position beginning January 15, 2013, and that the injured employee declined the position indicating his injury prevented him from sitting. The employer reported the injured employee's last day worked was December 13, 2012. The employer reported the injured employee voiced concerns regarding reduction of pay with the dispatching job along with the high cost of living in North Dakota, making it difficult to accept and perform the job of dispatcher.
- On January 17, 2013, WSI issued a Notice of Decision Accepting Claim and Awarding Benefits. Workforce Safety and Insurance accepted liability for contusion of back, thoracic sprain and strain, and lumbar sprain and strain. The injured employee's physician released him to return to light-duty work, which did not include truck driving.
- On March 8, 2013, WSI issued a Notice of Intention to Discontinue/Reduce Benefits effective January 15, 2013, indicating, "You have been released to return to employment by Erin Pirkl, PA-C beginning 12/12/2012. On 12/13/12 you were put on light duty/desk work restrictions and your employer offered you a position within those restrictions on 1/15/13 and you declined it, therefore, self-limiting your income."

- On March 20, 2013, the injured employee requested reconsideration of WSI's Notice of Decision, indicating he was unable to work because of restrictions related to the December 11, 2012, work injury.
- On May 22, 2013, WSI issued an order stating "Claimant is not entitled to disability or vocational rehabilitation benefits while he voluntarily limits his income."
- On May 29, 2013, the injured employee requested the assistance of the WSI Decision Review Office (DRO), and on June 12, 2013, DRO issued its certificate of completion without a change in the decision of the order.
- On June 20, 2013, the injured employee requested a hearing on the May 22, 2013, order.
- On December 5, 2013, a hearing was held before an administrative law judge (ALJ).
- On December 11, 2013, the ALJ issued Findings of Fact and Conclusions of Law and Order, finding that the injured employee's employer offered the injured employee light-duty office employment and he declined to accept that offer. Additionally, the ALJ found there were no medical restrictions preventing the injured employee from doing light-duty employment. As a result, the ALJ found the refusal to accept the offered employment was a voluntary limitation of income pursuant to NDCC Section 65-05-08, and this action disqualified the injured employee from receiving disability benefits for wage loss. The WSI order was affirmed.
- The injured employee did not appeal the ALJ's order, and the decision became final.

The committee was informed that if the injured employee had accepted a job, WSI would have considered the difference in pay between the old job and the new job in calculating wage loss benefits. Additionally, if there had been an unsuccessful work attempt, the injured employee may have had his wage loss benefits reinstated. However, neither of these things occurred and the injured employee's wage loss benefits were terminated.

Issues for Review

The injured employee's wife provided the following information to the committee:

- Many errors were made in her husband's workers' compensation claim, including evidentiary errors.
- Her husband was not allowed time to appeal the ALJ's order, in part because of mistakes on WSI's website which were relied on by her husband to his detriment.
- The claimed job offer did not occur. The evidence in the WSI records does not support a finding that the job was offered. There are notepad entries missing in the WSI records. The job claimed to have been offered was more than her husband could handle, it was for less pay, and it was for longer hours.
- The administrative hearing was problematic.

  The injured employee did not fully understand the process, whereas WSI is very experienced and knowledgeable about the entire process, resulting in an unfair outcome. Workforce Safety and Insurance has access to legal counsel and the employer has access to legal counsel, but the injured employee does not have access to legal counsel. Not only was the injured employee unable to afford legal counsel, but there are so few attorneys in the state willing to represent injured employees that he would not have been able to find an attorney even if he had been able to afford one. If the injured employee is not required to have legal counsel and it is nearly impossible to find legal counsel, the system should be designed to look out for the injured employee and do what is right for the injured employee.

  WSI limited the information presented at the administrative hearing, failing to admit evidence that would have supported her husband's position.

  The injured employee did not have access to a recording of the administrative hearing.
- The appeal from the administrative hearing was problematic.

  After the administrative hearing was held and the order was issued, the injured employee provided the ALJ with additional information and the ALJ stated he would treat this as a petition for reconsideration under NDCC Section 28-32-40. Workforce Safety and Insurance and the employer opposed the motion for reconsideration. On January 10, 2014, the ALJ issued an Order Denying Request for Reconsideration.

  The injured employee did not understand when his time for appeal expired. Not only was the information on the WSI website incorrect regarding when an order becomes final (and this error has since been corrected), but he thought his time for appeal may have run before the ALJ ruled on the petition for reconsideration.

The injured employee's wife requests that WSI exercise its continuing jurisdiction and reopen her husband's claim to address the issues she raised and reverse its decision. Workforce Safety and Insurance chose to not exercise continuing jurisdiction to address the issues raised by the injured employee in this claim review.

Workforce Safety and Insurance Response

The WSI representative summarized the law relating to appeal times and clarified that the order issued by the ALJ states the appeal process. The representative of WSI testified that although the law can be complicated, the law needs to be followed in order for the system to work correctly.

Committee Considerations

The committee identified the following primary issued raised on behalf of the injured employee in the claim review:

- The job offer;
- Lack of legal counsel;
- Appeal timeframe;
- Administrative hearing recordings; and
- WSI notepad entries.

The committee received testimony from the injured employee's wife that it would have helped if the employer's job offer had been in writing and by registered mail. The committee received testimony from a representative of WSI that it would be the best practice to have an employer's job offer in writing, but it is not known whether a statutory requirement that the job offer be in writing would have a positive, significant impact on injured employees.

The committee considered the length of time allowed for appeal and found if the period for appeal is lengthened, it will have the effect of slowing down an injured employee's ability to seek relief.

A member of the committee stressed the importance of legal representation, voicing concern that an injured employee may not always fully appreciate the consequences of the injured employee's decisions and the WSI notices can be confusing to a layperson.

A committee member recognized it is a reoccurring issue for injured employees to be dissatisfied with claims adjusters, and questioned whether it might help if claims adjusters had smaller caseloads in order to provide better customer service. A committee member stressed the importance of keeping things in perspective as perhaps the number of complaints is very small given the number of client contacts for each claims adjuster.

Workforce Safety and Insurance Status Updates

To keep apprised of current events at WSI, at each committee meeting the committee received status updates on timely topics and topics raised as part of the claim review process.

Attorney's Fees and Post Decision Review Office Consultation

In response to issues raised during the claim review, the committee received information regarding how WSI sets attorney's fees for attorneys of injured employees, the attorney's fee rates WSI pays its contracted legal counsel, and the post-DRO consultation funds.

A representative of WSI reported NDAC Section 92-01-02-11.1 sets the hourly rate for attorney's fees for injured employees at $140, and WSI uses this same rate for its contracts with attorneys to represent WSI at administrative hearings. Workforce Safety and Insurance is able to amend its administrative rules as necessary to change the hourly rates in response to the needs of the market.

A representative of WSI reported on the use of the post-DRO attorney consultation available under NDCC Section 65-02-35, which was enacted in 2009 as a result of recommendations of the Workers' Compensation Review Committee. The maximum of $500 for attorney's fees and maximum of $150 for costs are codified, and WSI reported that now that the program is up and running, WSI pays out approximately $100,000 per year under the program. Although a change in the amount of payment allowed under the program would require legislation, the rates were set in 2009 and testimony from WSI indicated these rates do not require updating at this time.

Independent Medical Examinations

In response to issues raised by attorneys representing injured employees and recommendations included in the 2010 and 2014 performance evaluations, the committee received background information regarding IMEs. The committee received an overview of 2013 Senate Bill No. 2298, regarding the weight given conflicting medical opinions;

the committee reviewed the IME recommendations in the 2010 and 2014 performance evaluations; and the committee received material regarding the three most recent independent studies, evaluations, and reports regarding IMEs:

- February 1, 2007, "Independent Medical Examination Audit Report" performed by DA Dronen Consulting;
- October 8, 2008, "2008 Performance Evaluation Report" performed by Berry, Dunn, McNeil, and Parker; and
- August 2010 "Workforce Safety & Insurance Independent Medical Exam Study" performed by Trean Corporation.

Upon receipt of the information relating to recent legislative action regarding IMEs, the three prior IME studies, and the performance evaluations recommendations, the committee took this issue under advisement and did not make any recommendations at this time. The committee will continue to receive reports from WSI on the implementation of the performance evaluations, including the IME recommendations.

Preexisting Conditions

In response to issues raised by attorneys representing injured employees, the committee reviewed the topic of preexisting conditions. The 2010 performance evaluation included an element that provided for a comparison of other states' workers' compensation laws, including laws relating to prior injuries, preexisting conditions, triggers or chronic conditions, and aggravations. The committee reviewed 2010 performance evaluation material providing a state-by-state comparison with respect to workers' compensation treatment of prior injuries, preexisting conditions, and degenerative conditions. The 2010 performance evaluation included five recommendations regarding this element, and WSI reported all five of the recommendations are closed, which means each of the recommendations was fully implemented, partially implemented, or WSI did not concur with the recommendation and that WSI is no longer taking actions to address the five recommendations. The committee took this issue under advisement and did not make any recommendations at this time.

Vocational Rehabilitation

To stay abreast of current events at WSI, the committee reviewed the status of WSI's vocational rehabilitation services. The committee received data regarding WSI's vocational rehabilitation services provided during the period July 1, 2011, through June 30, 2014, and regarding WSI's vocational rehabilitation services expenses during the period July 1, 2009, through December 31, 2013. In addition to the receipt of this information, the 2014 performance evaluation included an element addressing vocational rehabilitation services, and the committee received the related recommendations. The committee did not make any recommendations regarding this matter.

Employment Trends

The committee received periodic updates on employment trends in the state, including the increase in WSI's book of business as the economy continues to grow, the increase in the number of out-of-state businesses entering the state, the state's employment mix moving to heavier industry and the associated higher risk of this employment, and personnel steps WSI has taken to stay abreast of this increasing workload. The committee recognized as a result of this growth in the state's economy, WSI is facing increasing personnel needs and WSI may need to request legislative approval for additional full-time equivalent (FTE) positions to address these personnel needs.

2010 WSI Performance Evaluation

The committee received updates on the status of WSI's implementation of the 2010 performance evaluation recommendations. A representative of WSI reported of the 50 recommendations made in the 2010 performance evaluation, WSI has closed out 45 recommendations and WSI is still working on 5 of the recommendations.

PERFORMANCE EVALUATION

In accordance with NDCC Section 65-02-30, at the beginning of the interim, the committee selected four elements to be included in the performance evaluation and the State Auditor selected four elements to be included in the performance evaluation. The State Auditor selected the following four elements to be included in the performance evaluation: IMEs, fraud investigations, the claims process, and vocational rehabilitation. The committee considered the elements WSI proposed be included, and the committee selected the following four elements to be included in the performance evaluation: the preferred provider program, cost of living adjustments, narcotic usage, and posttraumatic stress disorder. By selecting the preferred provider program as an element of the WSI performance evaluation, the committee fulfilled its charge of studying WSI's preferred provider program as provided for under 2013 House Bill No. 1051.

Elements

The State Auditor awarded the contract for the performance evaluation to Sedgwick Claims Management Services, Inc. (Sedgwick). The WSI performance evaluation request for proposals (RFP) provided the following eight elements be addressed:

1. Independent medical examinations.

   a. Review the entire IME process, with a comparison to Sedgwick's IME national best practices developed in 2012.

   b. Conduct an analytical review of the overall number of "lost time" claims.

   c. Review a sample of a minimum of 75 "lost time" claims that included the use of an IME during the evaluation period (calendar years 2011, 2012, and 2013). An evaluation of each of the sample items to determine:

      (1) If the use of an IME and the process used to assign the IME physician complied with all applicable laws, rules, regulations, and WSI policies and procedures.

      (2) The percentage of times the IME physician disagreed with the opinion of the claimant's treating physician.

      (3) How this percentage compares with similarly calculated percentages in at least five comparable workers' compensation systems and analyze the reasons for significant differences. In addition, compare this percentage to national statistics.

      (4) If the specialty of the IME physician was either the same as the claimant's treating physician or was a specialty better versed in the specific injury.

      (5) If the use of an IME significantly delayed resolution of the claim.

   d. Analyze the percentage of times an IME was used for "lost time" claims processed by WSI for each year covered by the performance evaluation, and a comparison of this percentage to the percentage of times an IME was used for "lost time" claims in at least five comparable workers' compensation systems.

   e. Review the total costs for the use of IME physicians and any other third parties related to IMEs for each of the calendar years covered by the performance evaluation, including relevant travel expenses for the IME physician and the claimant and WSI's costs of using other organizations to locate or recruit physicians to conduct IMEs.

   f. Review the process WSI follows to locate or recruit IME physicians. Determine if the agency is following relevant state statutes, administrative code, and WSI policies and procedures, including preference for an IME physician licensed in the state in which the employee resides in accordance with NDCC Section 65-05-28. Also, a determination of whether five comparable workers' compensation systems, at a minimum, use more effective or efficient processes to locate and recruit in-state physicians.

   g. Review the percentage of times the IMEs for calendar years 2011, 2012, and 2013 were conducted by North Dakota physicians, and a comparison of this percentage to at least five comparable workers' compensation systems, and if available, national data.

   h. In the context of this element, Sedgwick also addressed how WSI has implemented recommendations 1.3, 5.1, and 5.4 of the 2010 performance evaluation.

2. Fraud.

   a. Review WSI processes, procedures, and policies as they relate to claims handler functions to identify suspicious claims. Analyze fraud personnel procedures to review, determine, document, and investigate suspicious claim activity in all facets of the workers' compensation system. Compare state policies and procedures to those of WSI.

   b. Determine the areas of responsibility within the department to appropriately and effectively investigate suspicious claims in the three specific areas of workers' compensation fraud: employee, employer, and provider. Review workloads and workflows to determine if WSI has the necessary resources to address these specific areas and if the resources are being utilized appropriately.

   c. Review the current software being utilized by the fraud unit to identify potential fraud in all aspects of the workers' compensation system. Determine if the software has impacted the identification of fraud and if those programs are sufficient to properly identify fraud. Through the review of the comparable workers' compensation investigation departments, determine possible enhancements to technology programs to enhance the effectiveness of fraud identification.

   d. Review current training documents of claim handlers and fraud investigators to determine if the training program provides the necessary knowledge and skills to identify and investigate fraudulent claims in all areas of the workers' compensation system.

e. Analyze all suspicious claim investigation undertaken by the fraud unit for 2011, 2012, and 2013. Determine and categorize investigations by party (i.e. employee, employer, or provider fraud). Review those claims by category and determine financial outcomes of each claim to include recoveries and cost avoidance.

f. Evaluate current WSI performance indicators and metrics to determine if those performance objectives are appropriate in properly evaluating the fraud unit's personnel in the identification and investigation of suspicious claims.

g. Determine WSI's mechanism for capturing and tracking return on investment data and provide an analysis of that data as it relates to the comparable state's fraud investigation program.

3. Aspects of the claim process.

a. Review the appeals process available to claimants to include a comparison of this process to five other states and any "best practices" that may exist pertaining to the appeals process.

b. Analyze denied claims submitted to the DRO during calendar years 2011 through 2013 with an analysis of the number of times a decision was modified and whether the denials were supported by state law, administrative code, and WSI's policies and procedures.

c. Review the denial rate calculation process, including review of the rationale and accuracy for denial rate adjustments, the rate of denials in calendar years 2011 through 2013, and how these rates compare to national norms and the averages of five comparable states.

d. Analyze claims filed trends over the performance evaluation period, recognizing that claims filed year over year within the evaluation period and considering how that has influenced WSI's staffing and claim processes.

e. Review the appeal system as managed by the Office of Administrative Hearings (OAH) and whether alternative forms of dispute resolution could enhance the process from a timing and cost perspective.

4. Vocational rehabilitation.

a. Determine whether WSI has sufficient policies and procedures established to guide the staff and to establish protocol to ensure consistent, quality services for the return-to-work of injured employees.

b. Evaluate whether WSI has performance measures in place to adequately evaluate the performance of the vocational rehabilitation division.

c. Compare, to the extent data is available, WSI performance measures to those measures used in at least five other states.

d. Determine whether WSI surveys claimants who used return-to-work services or if any other means are utilized to determine claimant satisfaction and provide an analysis of those results.

e. Review 75 claims in which vocational rehabilitation services were provided to assess how policies and procedures are followed as well as assess compliance with various Century Code sections that define vocational obligations.

f. Determine how WSI compares with at least five other comparable workers' compensation systems in returning injured employees to the work force.

g. To the extent national benchmarks may be available, compare how WSI is returning employees to the workforce against those benchmarks.

5. Preferred provider program.

a. Conduct a complete and thorough review of the program including the legislative history of 2013 House Bill No. 1051, comparing the claims results and outcomes to the intended results in the bill to determine the success of the program.

b. Perform a thorough review and audit of the credentialing policies and procedures as well as the provider quality assurance program to ascertain whether the qualifications of the selected providers are appropriate for the program.

c. Compare the previous claims outcomes to the current program outcomes to demonstrate the benefits to the employees and employers and to measure the overall effectiveness of the program.

d. Review the administrative costs of operating the program.

e. Compare the current WSI opt-out policy to other states to determine the overall effectiveness of the WSI opt-out, including consideration of eliminating the policy.

f. Send questionnaires to and utilize online surveys for employers and employees to evaluate their understanding of the program.

6. Narcotic utilization.

   a. Review WSI policies and procedures relating to the use of narcotics.

   b. Evaluate North Dakota's narcotic utilization trends with a comparison to at least five comparable workers' compensation systems (when adjusted for North Dakota's labor force and age of the claims).

   c. Evaluate and compare utilization trends among localities and medical specialties within North Dakota.

   d. Analyze potential causes for variations with at least five other comparable workers' compensation systems as well as within the localities and medical specialties within North Dakota.

   e. In the context of this element, Sedgwick also addressed how WSI implemented recommendations 6.1 through 6.6 and 6.9 of the 2010 performance evaluation. An evaluation of narcotic utilization was also part of that evaluation and these prior recommendations tie in, and in some cases overlap with areas of interest in this WSI performance evaluation.

7. Cost-of-living adjustments.

   a. Review the process for determining the annual cost-of-living adjustments (COLAs) provided to certain benefit recipients after three consecutive years of disability.

   b. Compare the process for determining the annual COLA with at least five comparable workers' compensation systems providing for a COLA, including comparing and contrasting eligibility requirements to qualify for COLA as well as the basis used to determine COLAs.

   c. Identify national best practices, if available for this area and compare to North Dakota's processes and determination of COLAs.

8. Posttraumatic stress disorders.

   a. Evaluate posttraumatic stress disorder (PTSD) in five comparable workers' compensation systems, including an identification of any trends in coverage along with eligibility requirements for receiving coverage in each of the systems selected.

   b. Determine the economic impact on WSI of providing coverage for PTSD for any type of compensable injury.

   c. Consider the pros and cons of providing PTSD coverage and the various conditions associated with eligibility requirements.

   d. Within the original RFP on this project, there had been a provision suggesting that if national data were available relating to coverage of PTSD that Sedgwick provide that information. National data in the workers' compensation community is not available and is also difficult to obtain on a state-by-state basis. The RFP further suggested that if national data is not available that the consultant work with the State Auditor's office to estimate a cost to survey states so national trends could be identified. Following the issuance of the RFP, Sedgwick worked with the State Auditor's office and indirectly with the committee to scale this element to specific types of PTSD circumstances and to forecast potential costs in keeping with those criteria.

Performance Evaluation Recommendations

For the eight elements of the performance evaluation, the report prepared by Sedgwick included recommendations identified by priority level, WSI's response to the recommendations, and Sedgwick's replies to WSI's responses. The material in this report is limited to the recommendations and does not include WSI's responses or Sedgwick's replies.

Independent Medical Examinations

Recommendation 1.1: High Priority. Sedgwick recommends when a new claim is filed, the WSI claim system be reviewed for all prior claims filed under the claimant's social security number to identify prior claims already in the WSI claim system. A synopsis of related body part injuries and medical conditions should be documented in the notepad, along with the name and location of any prior treating physicians, and the location of any diagnostic testing for the related body part or parts in questions. This recommendation would allow claims examiners the ability to identify and review all prior notes, medical records, and claims decisions made on prior work related injuries that were WSI's liability. This recommendation would also assist the staff with requesting prior medical records and diagnostic test results (lab, x-rays, scans, etc.) for treating physician and potential future IME review. Special medical releases may need to be sent to the claimant to obtain medical evidence from states other than North Dakota.

Recommendation 1.2: High Priority. Sedgwick recommends WSI utilize more IMEs to facilitate claim resolution and manage claim costs. The standard claim investigation process in the majority of the states is to identify potential issues early in the life of the claim and to get these issues resolved as quickly as possible. This resolution involves taking statements, requesting medical records at the beginning of the claim, setting baselines, reviewing records for potential cost drivers, and working with the treating physician in managed care strategies. An IME is useful in early stages to set expectations and again at the next juncture at which the specific claim type should have been resolved based upon the nature and severity of the claim, official disability guidelines, and best practices. It is also useful at the time a new condition or body part is migrating into the claim. While not all time-loss cases need an IME, the use of an IME on claims that are open for one year or slightly more is helpful to define what is preventing the claim from closing, which allows the claims organization to begin working more diligently with the treating physician and injured employee at setting goals for claim resolution. Workforce Safety and Insurance's use of IMEs has been very cost-effective, in that appropriate denials associated with IMEs have been very effective at reducing the future cost of the claim files.

Recommendation 1.3: High Priority. Sedgwick recommends upon receipt of an internal independent medical records review (IMR) that raises a dispute in compensability which would preclude benefit provision to a claimant, that WSI first solicit concurrence from the treating physician. If the treating physician does not agree with the IMR, or does not respond to the request for concurrence, WSI should proceed with the IME process to resolve the dispute that was created with a records review. This would require that WSI refrain from issuing decision notices without at least two attempts to obtain concurrence from the primary treating physician.

Recommendation 1.4: High Priority. Sedgwick recommends WSI immediately resume its attempts to locate North Dakota physicians who will serve as independent medical evaluators to improve the frequency of use of North Dakota physicians in this area. Not one in-state medical provider was utilized to perform an IME for North Dakota constituency in the past three years. Coupled with the fact that the last attempt to generate some interest in this area was made four years ago gives the appearance that this is not an area of great importance. Sedgwick's review of five comparable states found that in-state medical providers were used 79 percent of the time at the very least. In one state, 100 percent of the IMEs used in-state providers. There are most certainly highly qualified physician specialists in the state of North Dakota who are both competent and highly respected for their ability to produce a sound and well-reasoned second opinion on any of the claim-related subject matters that WSI requires. Workforce Safety and Insurance needs to reach out and develop relationships within the state's medical community, offering training and providing incentives to welcome its in-state medical partners into the WSI IME preferred vendor pool.

Recommendation 1.5: High Priority. Sedgwick recommends WSI locate space in medical facilities to host IMEs in strategic locations throughout the state of North Dakota to serve its injured North Dakota constituents. Sixty-five percent of the IMEs in the evaluation sample were needed in North Dakota. Conducting IMEs in locations near North Dakota's most populated areas will reduce claimant time loss from work and hotel, meal, and mileage reimbursements. The costs associated with IME travel would be offset by reduced claimant reimbursements.

Recommendation 1.6: High Priority. Sedgwick recommends WSI develop and provide web-based training opportunities for North Dakota treating physicians designed to improve communication and help the medical community understand how the workers' compensation system works in North Dakota. The outreach curriculum should include frequently asked questions and links to applicable statutes, codes, and case law citations that are most frequently applied and misunderstood. A more in depth program will need to be developed to provide training to potential IME physicians in North Dakota laws, rules, regulations, and case law.

Recommendation 1.7: High Priority. Sedgwick recommends WSI review its IME-related claims procedures in their entirety with current staff, more specifically supervisors, to ensure that the procedures and processes as documented are being followed. Further, claims with IME requests should be sampled regularly by supervisory staff to ensure that all procedures and processes that pertain to claimant advocacy issues have not been overlooked.

Recommendation 1.8: High Priority. Sedgwick recommends the claim evaluation process should always begin with inquiries at the treating physician level. If the form letter FL332 in the claim procedure manual is not the vehicle WSI uses to do this, WSI should implement some other appropriate process to fully inform the treating physician of the level of detail that is required to meet the test of "objective medical evidence" that gives the treating physician the opportunity to represent the claimant.

Fraud Investigations

Recommendation 2.1: High Priority. Sedgwick recommends the WSI fraud unit review the old fraud unit manual, update it according to current fraud unit practice, policy, and procedures, and provide to all fraud unit staff.

Recommendation 2.2: High Priority. Sedgwick recommends WSI develop a process in conjunction with its medical vendors (CGI and PMSI Comprehensive Health Care) to review atypical payment trends as a starting point for

provider investigation. One component of this process should include an assessment of referral patterns for ancillary medical services in which a treating provider has a financial interest. Information of this sort could be available through state records relating to corporate filings. Another way of obtaining this information would be to require by statute that providers disclose any financial interest they have in ancillary services if that interest is equal to or greater than 5 percent. Once WSI has this information, WSI can evaluate trends by comparing providers of like specialties treating injuries in the same geographic area.

Recommendation 2.3: High Priority. Sedgwick recommends WSI develop techniques in data mining to detect fraud, notably as regards medical providers given the relative lack of provider fraud detected not only in the performance evaluation period but before that as well. Sedgwick is not sure what the data mining results will be but provided two examples. First, within the bill review area WSI could track the frequency with which certain followup office visit codes are used by medical providers in the state. If this is implemented, WSI may learn that many providers use relatively simple or low-level procedure codes when submitting their bills for reimbursement. Other providers may tend to use higher, more complex codes. Workforce Safety and Insurance could then measure these trends and can then filter the results by provider as a way of better understanding individual provider billing practices and validating whether the more complex codes are justified. A broad-based metric tied to this effort would be a report that sorts by billing code and then monitors how trends may change over time. A second approach should be tied to Recommendation 6.4 in the Narcotics Utilization section of this report in which Sedgwick recommends provider profiling. Once prescribing patterns are better understood, something may be gleaned from the analysis which suggests fraud or at least a need to educate providers who are outliers when compared to their peers.

Recommendation 2.4: High Priority. Sedgwick recommends upon implementation of Recommendations 2.2 and 2.3 that WSI expand its training of staff in the claims, medical, and policyholder services areas. The training should feature any new fraud detection practices that have been developed as well as information on trends observed through the data mining process. Sedgwick also recommends that when fraud has been detected, particularly in instances when the type of fraud constitutes a unique or new approach, that information be disseminated around the organization to appropriate staff.

Recommendation 2.5: Medium Priority. Sedgwick recommends WSI collect information on cases for which restitution is made. To the extent changes occur in restitution expectations, these changes should be tracked so there is a comprehensive means of accounting for expected restitutions and ultimate recoveries. In short, it would be wise to have comprehensive information on what is compromised as well as solid rationale for the reduction of the initial obligation.

Recommendation 2.6: High Priority. Sedgwick recommends the fraud unit reassess its method of calculating cost avoidance. When the amounts in outstanding reserves and cost avoidance are drastically different it suggests either reserves are woefully understated or avoided costs are inflated or possibly both. Sedgwick recommends as WSI reassesses its methods for calculating cost avoidance that it consider how medical treatment patterns have changed over time. More recent years of payment activity should be given precedence in the calculation as these years are more reliable predictors of future cost.

Claim Processes

Recommendation 3.1: High Priority. Sedgwick recommends the operating report provide an appropriate footnote to describe the denial types that are excluded from the adjusted acceptance rate. For instance, when referring to claim technical denials it would be useful to know the kinds of cases that fall into this category.

Recommendation 3.2: Medium Priority. Sedgwick recommends that to the extent WSI can develop an informal network of treating doctors who practice out-of-state and who are familiar with and accepting of WSI's requirements, this could help WSI better manage out-of-state claims. Matching might occur by comparing provider zip code to the zip code associated with the injured employee's residence. Adjusters should also be pooled for names of those out-of-state providers with whom they have worked successfully.

Recommendation 3.3: Medium Priority. Sedgwick recommends WSI work with OAH to amend the calculations it does on cases so that an average duration from receipt of file to file closure breaks out those cases that proceeded to hearing when the hearing was initially set, and another data set for those cases for which hearings occurred later than originally set. Hearing delays typically occur because one of the parties has requested a delay or continuance and some instances of delay can be weather-related. Workforce Safety and Insurance would be well-served if it can identify all cases that do not meet the 160-day target when hearings occur as initially scheduled. Workforce Safety and Insurance might then publish two rates, with the second rate including the average duration from OAH receipt to OAH closure when delays have occurred because the hearing did not occur on the original hearing date.

Vocational Rehabilitation

Recommendation 4.1: High Priority. Sedgwick recommends WSI issue its orders pertaining to vocational plans in a timely manner. If the legislature believes an order is issued timely within 60 days of final approval of the vocational manager's report (VCR), Sedgwick suggests the statute be amended to reflect that intent.

Recommendation 4.2: High Priority. Sedgwick recommends WSI prepare legislation governing the payment of temporary partial benefits for vocational plan participants to be amended such that the combined value of post-injury earnings and temporary partial disability may not exceed 90 percent of the injured employee's preinjury earnings.

Recommendation 4.3: High Priority. Assuming WSI and the injured employee settle a vocational rehabilitation entitlement, Sedgwick recommends the law should be written in such a way that if an employee wishes to return to work in North Dakota in the same or similar position after acceptance of a vocational benefit settlement and the employee claims a worsening of the condition, causing additional disability, that WSI be allowed to take a credit up to the full value of the settlement against future disability benefits. Such a provision would mimic the State of Washington's option 2 language.

Recommendation 4.4: High Priority. As a preliminary statement to this recommendation, Sedgwick recognizes WSI is in the midst of a project to create a data collection and reporting environment for rehabilitation and legal services. This environment is functioning to some extent but not yet optimally, so the recommendations are made with the understanding that these metrics should be available as functionality exists in the environment to capture the required elements accurately. Metrics should include:

- Continue the CL0954, 0956, 0958, and 0959 reports.
- Add a column to the CL0958 report so it captures the percentage the average post-injury average weekly wage (AWW) is of the average preinjury AWW as this percentage will show the extent to which injured employees have on average achieved a post-injury wage that is at least equal to 90 percent of their preinjury wage. This percentage can be displayed both on the summary page--page 1 of the report--and throughout the detail portion of the report on each case.
- When closing out a case, build in a data element that identifies whether the post-injury weekly wage is based on earning capacity when the injured employee has not returned to work or actual wages. This particular data element is relevant to Recommendation 4.7 on injured employee surveys.
- For long-term training programs that can by statute run for up to 104 weeks, have a flag to capture those programs that are extended beyond 104 weeks. Use this data to evaluate the reasons for program extensions and whether there is anything WSI and the injured employee could have done to complete the program as originally scheduled.
- For cases on which a functional capacity evaluation (FCE) occurs, track that date. Vocational services often kick into a higher gear once the FCE is completed and the treating physician has signed off on the capabilities identified through the FCE. The FCE approval date from the treating physician should be tracked and then a date set for completion of the VCR should follow. Assuming the injured employee is not in the middle of skills upgrading or obtaining a general education development at the time the FCE is approved, a target date for the VCR should be 45 days unless a long-term training program is to be recommended in which case 75 days could be allowed.
- Track plan options by case manager so the return to work services director can evaluate how effectively they are pursuing the preferred plan options. For instance, if an average case manager has 60 percent of that case manager's cases pursuing options that are among the first four plan types, the director can evaluate a case manager who falls well below that average. Similarly, if someone is more successful, then perhaps that case manager's approach can be evaluated so other case managers can learn from that approach. It might be useful to link this type of data collection to the residence of the injured employee to see if later plan options tend to occur more frequently among those who live in more remote areas.
- Include summary data from the CL0958 report in the quarterly operating report. The values to include would be the number of cases closed, the average preinjury wage, and the average post-injury wage.

Recommendation 4.5: Medium Priority. Sedgwick recommends WSI examine the reason for the decline of those in the survey pool when comparing older years to newer ones. Sedgwick recommends that if the underlying pool is roughly the same year over year that the survey pool should in future surveys include more injured employees.

Recommendation 4.6: Low Priority. Sedgwick recommends the survey include questions relating to the respondent's education level and whether services were provided during vocational rehabilitation to improve that education level.

Recommendation 4.7: High Priority. Sedgwick recommends the survey be expanded to include a sampling of injured employees a second time. This sampling would be limited to employees who were not working at the time of the initial survey and timed to occur one year after the quarter in which they were initially surveyed. The survey should be limited to whether they have returned to work, how long they have been working, what kind of work they are doing, whether they are working part-time or full-time, and what their current earnings are. For those who have returned to work, injured employees should be asked if they think something could have been done in their vocational rehabilitation experience that they believe could have led to an earlier return-to-work.

Recommendation 4.8: Medium Priority. Rather than being required to issue a formal order when injured employees referred for vocational services return to their regular job, Sedgwick recommends WSI issue a notice similar to what it would issue when an employee returns to the employee's regular job following a period of temporary total disability. For cases of this type, there is not a need for WSI to compile a full VCR.

Preferred Provider Program

Recommendation 5.1: High Priority. Sedgwick recommends WSI develop a designated provider acknowledgement form to be submitted to the provider by the employer.

- The legislative intent identified the purpose of the preferred provider program to be the development of a relationship between the employer and the designated provider in order to improve the quality of care provided to the injured employees. By providing the acknowledgement form to the designated provider, WSI is ensured there is an established communication between the employer and designated provider and the designated provider wants to have the injured employees directed to the designated provider's care.
- The acknowledgement should provide the requirements of the program and the expectation of the designated provider.
- The form should require signature by the designated provider indicating an understanding of the program as well as a willingness to be the designated provider.
- The acknowledgement form should be maintained at the employer's office or facility and be available to WSI upon request.

If the employer elects to change the designated provider, a notice of the termination should be submitted to the current designated provider and the designated provider acknowledgement form should be submitted to the new designated provider.

Recommendation 5.2: High Priority. Sedgwick recommends WSI establish a formal policy not to retroactively seek reimbursement from the injured employee on auto-adjudicated claims when the claim is ultimately denied due to the injured employee not going to the employer's designated provider. The auto-adjudication process does not contemplate the preferred provider program and does not identify whether an injured employee went to the designated provider. To retroactively seek payment because the claim becomes manually reviewed due to additional bills at a later date and denied due to the injured employee selecting a nondesignated provider is not only unjust but would lead to litigation.

Recommendation 5.3: Low Priority. Sedgwick recommends WSI post on its website providers that have their license suspended or revoked.

- WSI is not and should not be required to credential preferred provider program designated providers. The employer selects the designated provider and not WSI.
- To require WSI to credential all designated providers would be cost-prohibitive, unduly burdensome, and unnecessary.
- In lieu of credentialing all preferred provider program designated providers, WSI should identify designated providers with suspended or revoked licenses.
- The information could be obtained from the State Board of Medical Examiners.
- This would provide employers easy quality assurance check by providing access to information verifying the license of their selected designated provider.

Recommendation 5.4: High Priority. Sedgwick recommends WSI develop a formal policy permitting an injured employee to opt-out if the injured employee's residence is more than a specified distance from the employer's designated provider.

- The legislature will need to establish a fair and reasonable distance from the injured employee's residence to the designated provider's office.
- Most state certified networks and state operated managed care organizations have legislation requiring sufficient provider coverage within a certain geographical distance from the injured employee's residence.
- Developing a formal policy clearly defining the distance from the injured employee's residence will provide uniformity in adjudicating the preferred provider program claims.
- To require an injured employee to travel in excess of 30 miles to obtain treatment is unduly burdensome and cost-prohibitive for the employee.

Recommendation 5.5: Medium Priority. Sedgwick recommends WSI simplify and expedite the designated provider 30-day opt-out provisions.

- The 30-day opt-out requirement actually takes 60 days from the date of first treatment to take effect.
- The employer objection provision of the preferred provider program is rarely if ever employed.
- A simple notification in writing by the employee provided to the employer any time after 30 days of treatment would simplify and expedite the process--creating a true opt-out opportunity to the injured employee.
- At the same time the injured employee provides the notice to the employer, the notification could be provided to WSI.

Recommendation 5.6: High Priority. Sedgwick recommends WSI contact all employers using the preferred provider program and receive an acknowledgement in writing the employers are aware of the fact they are in the program and they want to remain in the program.

- The employer questionnaire identified a significant number of employers that were unaware of the program.
- The employer questionnaire indicated a significant number of employers were unaware of the requirements of the preferred provider program.
- WSI should create an employer written acknowledgement form that provides the purpose of the program, the requirements of the program, and the employer's consent to continue the program. This will ensure employers using the program understand the program.
- By obtaining an affirmative written acknowledgement from the employers using the program, WSI will confirm the employers are aware of the program, its requirements, and its purpose.
- By obtaining a negative acknowledgement form, WSI will eliminate the employers who have signed up for the program and no longer want to participate in the program.

Narcotics Utilization

Sedgwick reviewed the extent to which WSI implemented the 2010 performance evaluation recommendations regarding this element, classifying the implementation as fully implemented, partially implemented, or not implemented. Additionally, Sedgwick made new recommendations regarding the narcotics utilization element.

Recommendation 6.1: High Priority. Since WSI's change from using US Script to using PMSI, the new pharmacy benefits manager has not produced the patient utilization report. This report is used to identify patients whose opioid use has continued for at least 90 days. Sedgwick recommends WSI work with PMSI to reinitiate this report.

Recommendation 6.2: Medium Priority. When WSI sends out the form letter 423-1, Sedgwick recommends the form letter be accompanied by a form letter to the provider asking the provider to identify a date when the provider believes the patient will be able to discontinue use of opioid treatment. Proportionately few patients receive more than two narcotic prescriptions so addressing those cases with a potential for a third fill seems a reasonably prudent step in opioid management.

Recommendation 6.3: High Priority. Sedgwick recommends WSI draft legislation to be considered in the next biennium which seeks to accomplish the following:

- Require the pain management contract be signed by the injured employee and treating physician in all cases for which opioid therapy has extended beyond 90 days.
- For cases of opioid use beyond 90 days, require no less frequently than quarterly that the treating physician address how the current opioid regimen is either decreasing pain or improving function. In those instances

where neither is demonstrated, WSI may use IMEs to determine if ongoing opioid therapy is necessary. These IMEs could lead to a decision by WSI to disallow certain opioids, to reduce the dosage, or to allow the treatment to continue as is.

- For cases of opioid therapy beyond 90 days, mandate that appropriate and random drug screens are accomplished to ascertain if medication is being taken as prescribed. Drug screens should occur no less frequently than semi-annually and may at the treating physician's discretion be conducted more frequently up to four times annually. Failed tests would be considered a breach of the pain management contract and under such circumstances WSI should have the discretion to discontinue payment for opioid therapy.

Recommendation 6.4: High Priority. Provider profiling was recommended in the 2010 performance evaluation but the prior pharmacy benefits manager could not accomplish the recommendation. Sedgwick recommends WSI pursue the profiling recommendation made in 2010 with the new pharmacy benefits manager, PMSI. To accomplish the profiling, Sedgwick recommends WSI profile and manage results according to the following criteria:

- Identify those physicians who have prescribed opioid medications over a certain dollar threshold in the past year (consider $20,000 as a starting point to see what the data reveals).
- Create a report that goes to the physicians who hit this threshold which provides for their patients the names of the injured employees, their dates of injury, when they commenced on opioid therapy, the amount prescribed in morphine equivalencies, and a return to work date if one exists.
- Schedule peer-to-peer meetings on cases selected by WSI with these treating physicians to include a review of the current opioid intake, morphine equivalencies, opportunities to reduce or discontinue opioid use, pain level, functional level, urine drug screening outcomes, and the use of generic medications in lieu of brand name.
- Establish goals or revised treatment plan objectives on each case and follow for compliance.
- Pay treating physicians for their time at an appropriate professional hourly rate for participating in these reviews.

Recommendation 6.5: High Priority. Sedgwick recommends WSI evaluate its current formulary and build in a prior authorization process for long-acting opioid medications requested within the first three months postinjury.

Cost-of-Living Adjustments

Sedgwick considered making a recommendation to implement a cap on supplementary benefits. However, in general, increases in wages are tied to economic prosperity in an area which can also be linked to an increased cost of living. If claimants on a fixed wage are subject to caps that run below the increased cost-of-living experienced in the state, they could be proportionately more affected. Further, the increases in state average weekly wage in 2012 and 2013 appear to be anomalies when compared to the 20-year history of changes in the state average weekly wage.

Sedgwick also considered making a recommendation for changing the requirement for three years of consecutive benefits before being eligible for COLA to a shorter time frame. Given the benefit types--death benefits and permanent total disability benefits--to which COLAs are applied, Sedgwick determined that three years is reasonable and relatively in line with national averages. The lack of a cap means that once COLAs commence recipients will see benefit increases in line with growth in the state average weekly wage. The timing of the first COLA means increases are delayed to some extent by the fact no COLA is paid until three consecutive years of disability benefits have been paid.

Given the review of North Dakota in the context of other states, the methods of benefit calculation, and the timing of COLA increases, Sedgwick makes no recommendations.

Posttraumatic Stress Disorder

Recommendation 8.1: Low Priority. If the legislature adopts a statute covering PTSD claims, Sedgwick recommends, that to the extent statutory language currently exists to require injured employees to file their claims within certain time frames, that this language be amended if needed to extend that time frame. The extension should be in keeping with when injured employees knew or should have known they have a PTSD injury and the condition is related to workplace experiences. The reason for this recommendation is to provide statutory relief for timely claim filing in keeping with the period of time that must elapse for the condition to actually manifest itself. Workforce Safety and Insurance may determine NDCC Section 65-05-01 would already achieve this objective, which is why Sedgwick categorizes this recommendation as low.

Recommendation 8.2: High Priority. When WSI currently pays for mental or psychological injuries arising out of a physical injury, at least 50 percent of the mental injury must be attributable to the work-related injury given other

possible causes. Sedgwick recommends application of the same 50 percent threshold if the legislature adopts statutory language to cover workplace PTSD when no physical injury has occurred.

Recommendation 8.3: High Priority. Sedgwick recommends:

- Workforce Safety and Insurance submit legislation to allow mental injury claims under one or more of the three scenarios referenced in the findings. Those scenarios include first responder claims, victims of violent crimes, and employees who experience unusual and extraordinary events. If legislation is submitted to cover employees who experience unusual and extraordinary events as the primary qualifying characteristic, Sedgwick recommends this language include first responders and victims of violent crimes.
- Workforce Safety and Insurance establish a cap on disability benefits in the legislation in a manner that is similar to the law in the state of Arkansas; that is, that temporary total disability benefits will not be paid for more than 26 weeks and no death benefit will be paid if the death occurs more than one year from the date of injury. Vocational rehabilitation services should be provided if as a consequence of the mental injury a return to the usual job is not possible.
- A PTSD diagnosis must be made by a qualified health care professional in the field of mental health before any benefit may be paid.
- Language should be included in new legislation which excludes from coverage any claim that allegedly arises out of normal employer and employee relations.
- A sunset provision should exist of no shorter than two years and no longer than four years during which time WSI should develop measures designed to identify the actual benefit costs to providing coverage for injuries of the types contemplated in the proposed legislation.
- Workforce Safety and Insurance identify as part of its metrics those injured employees whose temporary total disability benefits end because they have exhausted the 26-week cap. This should be part of an overall metric that includes a total claim count and total and average medical and indemnity costs as compared to average costs of other workers' compensation claims in North Dakota.
- If legislation is submitted specifically related to first responders, that legislation should identify and limit coverage to that occupation.
- Claims for PTSD would only be accepted based on an event date the legislation would establish.

Recommendation 8.4: Medium Priority. If the legislature adopts legislation to cover mental injury claims, employers that participate in the preferred provider program should include at least one psychologist or psychiatrist as a designated provider.

REPORTS

Safety Grants Report

Pursuant to NDCC Section 65-03-05, the committee received the biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03.

Rehabilitation Services Pilot Program Report

Pursuant to NDCC 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 indicates WSI has three new rehabilitation services programs in the works. The first new program is in the early stage of development and will provide for a vocational support program that will provide rehabilitation services to assist with psychological, economic, and social elements. If an injured employee participates in this new program, some of the rehabilitation timelines will be relaxed. The second new rehabilitation services program is a scholarship program for retraining students. Under this new scholarship program, WSI makes scholarships available to assist in paying for additional education beyond the traditionally covered associate degree. The third new rehabilitation services program is a rehabilitation grant program for grants to rehabilitation partners.

Modified Workers' Compensation Program Performance Audit and Roughrider Industries Safety Audit

Pursuant to NDCC 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 Rough Rider Industries to continue receiving federal funding through the prison industry enhancement certification program.

The performance review of the program for modified workers' compensation coverage was conducted by WSI's Internal Audit Department while the safety inspection of Rough Rider Industries' Prison Industry Enhancement Certification work programs was conducted by a WSI safety consultant. The three objectives of the modified workers' compensation coverage program review are to:

1. Verify excess coverage or reinsurance has been obtained;
2. Identify any claims filed for workers' compensation benefits; and
3. Verify premiums and other costs are being collected.

The report provides that since the beginning of the modified workers' compensation coverage program in 1999, it had been determined that coverage available under the risk management fund and its excess carrier are sufficient to meet the statutory requirements. However, before the 2014 fiscal year, the Risk Management Division and the Department of Corrections and Rehabilitation began reviewing whether the statutory coverage requirements have been interpreted correctly in the past. Workforce Safety and Insurance and the Risk Management Division determined that the excess/reinsurance coverage maintained by WSI's third party is adequate for the purposes of covering Rough Rider Industries at this time, regardless of whether the state's risk management fund is adequate. Workforce Safety and Insurance's current reinsurance coverage is for claims and events in excess of $3 million and up to $30 million. Workforce Safety and Insurance has had excess or reinsurance coverage in place by a third party during calendar years 1999-2002 and 2010 to the present.

The internal audit recommends the Department of Corrections and Rehabilitation work with WSI and the Risk Management Division to make the necessary language changes to all applicable sections of the Century Code and Administrative Rules relating to securing excess or reinsurance coverage under the modified workers' compensation program. If necessary language changes are not made, the Rough Rider Industries prison industry enhancement certification program should be discontinued and the workers' compensation account cancelled if at any point in time the excess or reinsurance coverage is no longer maintained by WSI's third party.

The report provides all claims for workers' compensation coverage benefits must be filed according to NDCC Section 65-05-01. Between the period of July 1, 2012, and June 30, 2014, there were no inmate injury claims filed. Additionally, the report finds WSI billed and Rough Rider Industries paid the necessary workers' compensation premium for the reporting period.

CONSIDERATIONS

The committee considered a bill draft WSI brought to the committee for consideration which would have expanded the workers' compensation definition of "compensable injury" to include PTSD for full-time employed first responders. The bill draft would have placed time and dollar limitations on the disability benefits and would have expired August 1, 2017. There was mixed committee support for this bill draft--some committee members supported the bill draft, some committee members supported the bill draft but voiced concern regarding what type of precedence the bill draft may be setting for future requests for expanding coverage for mental injuries, and some committee members did not support the bill draft.

RECOMMENDATIONS

The committee recommends Senate Bill No. 2059 to provide that for workers' compensation wage loss benefits, to establish that an employer made a job offer to an injured employee, the proof of offer of employment must be established by an employer's written offer to the employee by registered mail.

The committee recommends Senate Bill No. 2060 to establish protocols that must be followed as a prerequisite for WSI to cover chronic opioid therapy for injured employees. To qualify for coverage, the chronic opioid therapy must be appropriate and meet specified requirements; the status of the injured employee must meet specified requirements, such as have a diagnosis consistent with chronic pain; and the prescriber of the chronic opioid therapy shall comply with specified requirements, such as complying with documentation requirements and entering treatment agreements with the injured employee.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE MANAGEMENT FOR THE 2013-14 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Management for study during the 2013-14 interim under the authority of North Dakota Century Code (NDCC) Section 54-35-02:

Bill or Resolution No.	Subject Matter (Committee)
1009 § 10	Study the structure of the Milk Marketing Board; its statutory duties; the manner in which it prescribes and regulates producer, distributor, and retail prices throughout the state; the manner in which it investigates and resolves concerns regarding the price and availability of milk throughout the state; any policy or regulatory changes the board has implemented in order to address pricing issues and availability of milk in the western portion of the state; and whether the continued regulation of the Grade A dairy industry is best accomplished by the Milk Marketing Board in its current form and operating under its current statutory directives, whether changes are needed to the board or its statutory directives, and whether there are other methods by which the desired results could be effectively and efficiently achieved (Agriculture Committee)
1012 § 15	Study the immediate needs and challenges of the North Dakota health care delivery system, implementing the Healthy North Dakota initiative, examining Medicaid reform, and the feasibility of developing a plan for a private health care model that will comply with federal health care reform in a manner that will provide high-quality, accessible, and affordable care for North Dakota citizens (Health Care Reform Review Committee)
1012 § 16	Study the need for a comprehensive system of care for individuals with brain injury, including services available to veterans who are returning from wars, the impact of the inclusion of all acquired brain injury on traumatic brain injury programs, the need for a statewide registry for brain injury, the need for increased awareness of the impact of brain injury, the need for screening for brain injury in the education system, the availability of community support systems, the availability of specialized substance abuse services, the examination of the long-term care needs, the availability of home and community-based services, services available from independent living centers, the need for transitional supportive housing, and the suitability of the current level of care determination for brain injury (Human Services Committee)
1013 § 58	Study to examine and clarify state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education in this state (Education Funding Committee)
1015 § 37	Study the facility needs of state agencies located in the Bismarck area, including an evaluation of current and projected facility needs of state agencies, facilities on the Capitol grounds currently being used by state agencies, and facilities owned or leased by state agencies that are not located on the Capitol grounds (Government Services Committee)
1015 § 38	Study the process of appropriating funds for salaries and wages and the state's classification system, including the feasibility and desirability of appropriating a lump sum amount to each agency for salaries and wages, without identifying specific purposes for the funding and allowing the agency head the flexibility to use the funding as necessary to accomplish the duties and responsibilities of the agency, and the effect of this change on the state's classification and benefits system and on the process of reporting by the agency on its use of the funds to the Legislative Assembly (Government Finance Committee)
1015 § 39	Study the feasibility and desirability of establishing a maximum state contribution to the cost of state employee health insurance premiums (Government Finance Committee)
1015 § 40	Study the foundation aid stabilization fund, including anticipated growth in the fund, appropriate funding levels, options for the disposition of excess funding if appropriate funding levels are exceeded, the reallocation of oil extraction taxes currently being deposited in the fund, and the feasibility and desirability of proposing changes to the constitution relating to the foundation aid stabilization fund (Government Finance Committee)
1026 § 7	Continues the study of 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)
1034 § 1	Study health care reform options, including the implementation of the federal Affordable Care Act if the federal law remains in effect and state alternatives for state-based health care reform if the federal law is repealed (Health Care Reform Review Committee)
1051 § 1	Study the Workforce Safety and Insurance preferred provider program created under Sections 65-05-28.1 and 65-05-28.2 (Workers' Compensation Review Committee)
1132 § 1	Study the feasibility and desirability of making political subdivision budget information accessible on the state budget database website and finding better ways to inform taxpayers regarding political subdivision budget or levy deliberations and regarding legislative property tax relief (Advisory Commission on Intergovernmental Relations)
1154 § 2	Study those provisions of the North Dakota Century Code that relate to professional soil classifiers, including their qualifications and examinations, and the powers and duties of the State Board of Registration for Professional Soil Classifiers, for the purpose of recommending changes to laws that are irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction (Agriculture Committee)

Bill or Resolution No.	Subject Matter (Committee)
1198 § 8	Study the likely changes to oil industry practices, production, impacts, and tax policy in the foreseeable future, with the Legislative Management to obtain the services of an independent consultant with demonstrated insight into current and future production advances, including use of carbon dioxide and water or other means of enhancing production; effects of mature production areas on state and local tax policy; future infrastructure needs; and environmental considerations (Energy Development and Transmission Committee)
1206 § 2	Study to evaluate current water project prioritization processes for effectiveness in determining high-priority water projects for State Water Commission funding (Water Topics Overview Committee)
1362 § 3	Study the effects of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], due to the dramatically changing health care system in the state, including alternatives to the federal Patient Protection and Affordable Care Act and the Medicaid expansion provisions to make health care more accessible and affordable to the citizens of the state, including access, the cost of providing services, the Medicare penalty to the state's providers, and the Medicaid payment system (Health Care Reform Review Committee)
1452 § 16	Study the feasibility and desirability of existing and possible state retirement plans, including an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. If conducted, the study may not be conducted by the Employee Benefits Programs Committee. (Government Finance Committee)
1454 § 1	Study how to improve access to dental services and ways to address dental service provider shortages, including the feasibility of utilizing mid-level providers, whether the use of incentives for dental service providers to locate in underserved areas in the state may improve access, and whether the state's medical assistance reimbursement rates impact access to dental services (Health Services Committee)
2012 § 18	Study the long-term costs of transportation infrastructure maintenance and improvement projects and methods for funding these projects (Economic Impact Committee)
2015 § 5	Study the use of the structures and property of the James River Correctional Center and the State Hospital to determine the best and most efficient use of the properties (Government Services Committee)
2018 § 38	Study child care services, including consideration of the current and potential needs for child care services and the current and potential workforce needs related to child care, and the current quality of child care services (Economic Impact Committee)
2018 § 39	Study the intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011 (Higher Education Funding Committee; Judiciary Committee)
2018 § 41	Study the feasibility and desirability of the establishment of an energy corridor in the western portion of the state, including an examination of rights of way and state highway and county road easements necessary for the further development of energy resources in the state, and including the existing and necessary easements required to make United States Highway 85 a four-lane highway corridor to complement the development of energy transportation resources (Energy Development and Transmission Committee)
2024 § 2	Study the comprehensive statewide tobacco prevention and control plan used in this state, including a review of the service delivery system for the comprehensive statewide tobacco prevention and control programs provided by the Tobacco Prevention and Control Executive Committee and the State Department of Health, whether the delivery system is fiscally efficient, and how the delivery system is consistent with the Centers for Disease Control and Prevention's best practices for comprehensive tobacco control programs; review of the effectiveness of the comprehensive statewide tobacco prevention and control programs provided in the state and ways to improve the health and policy outcomes of the programs; and review of how the comprehensive statewide tobacco prevention and control programs provided by the two agencies address the Native American population on the Indian reservations (Health Services Committee)
2036 § 10	Study controlling the growth of property tax levies, with emphasis on consideration of whether the level of property tax relief received by taxpayers has been commensurate with the amount of state funds distributed to benefit political subdivisions and provide property tax relief to taxpayers; the additional cost to the state of state assumption of funding for some social service functions previously funded by counties compared to the actual reduction in property taxes passed through to taxpayers in each county; whether voter approval through referral or levy and budget restrictions should play a greater role in local taxing decisions; and the feasibility of establishing more restrictive statutory property tax limits to manage the growth of property taxes (Taxation Committee)
2078 § 1	Study the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute (Judiciary Committee)
2124 § 1	Study methods to assure that the legacy fund provides the lasting benefits intended by the voters in enacting the constitutional measure (Government Finance Committee)
2200 § 3	Study higher education funding methods and recommend for the North Dakota University System a new funding method that is not based on existing levels of funding (Higher Education Funding Committee)

Bill or Resolution No.	Subject Matter (Committee)
2234 § 1	Study Voice over Internet Protocol service and the effect of this service and other technologies on the telecommunications industry, including any desired changes in regulation and taxation (Information Technology Committee)
2243 § 1	Study behavioral health needs, including consideration of behavioral health needs of youth and adults and consideration of access, availability, and delivery of services (Human Services Committee)
2279 § 1	Study the benefits and implications on tax policy of the forestry stewardship tax (Taxation Committee)
2314 § 2	Study methods to assure that an accurate and reliable means is developed to measure effectiveness and accountability of property tax exemptions and other economic development incentives granted by cities and counties and to determine whether other taxpayers in the city or county ultimately derive a measurable benefit from granting of the incentives (Taxation Committee)
2340 § 1	Study the sentencing alternatives to incarceration for first-time felony offenses that are nonviolent, excluding the distribution of drugs (Commission on Alternatives to Incarceration)
2344 § 3	Study current state and federal benefits available to North Dakota veterans, including statutory changes that would benefit North Dakota veterans and include therein possible changes to state income taxes and property taxes, the provision of veteran-focused incentives, assistance with obtaining and maintaining benefits, and assistance with obtaining and maintaining various life-enhancing services (Government Services Committee)
2353 § 3	Study issues relating to the development of the current radio communication plan, its costs and components, and evolving technologies that will better serve the public (Information Technology Committee)
2375 § 1	Study home and community-based services in the state, including the need to expand the home and community-based services Medicaid waiver to cover 24-hour emergency assistance, adult companion service, behavioral programming, chore services, customized living services, environmental modifications, and transition modification support (Human Services Committee)
3009	Study the use of open textbooks in the North Dakota University System, including options to develop partnerships with other states to use open textbooks (Higher Education Funding Committee)
3019	Study the property tax system (Taxation Committee)
4002	Study the feasibility and desirability of community paramedics providing additional clinical and public health services, particularly in rural areas of the state, including the ability to receive third-party reimbursement for the cost of these services and the effect of these services on the operations and sustainability of the current emergency medical services system (Health Services Committee)
4023	Study whether political subdivisions can become more efficient and effective to reduce costs to taxpayers (Advisory Commission on Intergovernmental Relations)
4030	Study applying property tax rates against true and full value of property (Taxation 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 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)
4.1-72-08	Receive electronic copy of audit report from the North Dakota Stockmen's Association at least once every two years (Legislative Audit and Fiscal Review Committee)
10-19.1-152	Receive annual audit report from a corporation receiving an ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
10-32-156	Receive annual audit report from any limited liability company that produces agricultural ethyl 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)

NDCC Citation	Subject Matter (Committee)
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 project variance semiannual reports regarding construction projects valued at more than $250,000 (Budget Section)
15-10-54	Approve State Board of Higher Education imposing an assessment on or otherwise requiring individual institutions of higher education to pay for goods or services provided by or through the North Dakota University System office (effective until June 30, 2015) (Budget Section)
15-18.1-02	Approve changes by the State Board of Higher Education to the delineations in establishing instructional program classification factors to reflect a nationally recognized and standardized instructional program classification system (Higher Education Funding Committee)
15-39.1-10.11	Receive annual report from the Board of Trustees of the Teachers' Fund for Retirement regarding annual test of actuarial adequacy of statutory contribution rate (Employee Benefits Programs Committee)
15-39.1-35	Approve terminology adopted by the Public Employees Retirement System Board for Teachers' Fund for Retirement provisions to comply with applicable federal statutes or rules (Employee Benefits Programs Committee)
15-52-04	Receive biennial report and recommendations from the University of North Dakota School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the School of Medicine and Health Sciences (Higher Education Funding 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 Funding Committee)
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 Funding 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 Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports (Education Funding 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 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 Funding 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 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 Committee)
15.1-21-10	Receive from the Superintendent of Public Instruction the compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide (Education Funding Committee)
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)
18-04-02	Receive biennial report from the State Fire Marshal summarizing the expenditures by certified fire departments and districts of funds received from the insurance tax distribution fund and reserve fund balances (Budget Section)
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)

NDCC Citation	Subject Matter (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)
21-10-11	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)
23-01-40	Receive report from the Department of Human Services, State Department of Health, Indian Affairs Commission, and Public Employees Retirement System before June 1 of each even-numbered year on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes (Health Services Committee)
23-01-41	Receive report from the Department of Human Services regarding the autism spectrum disorder program pilot project (expires June 30, 2015) (Human Services Committee)
25-04-02.2	Authorize the Life Skills and Transition Center (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 Life Skills and Transition Center (Developmental Center at Westwood Park) (Legislative Audit and Fiscal Review Committee)
26.1-50-05	Receive annual audited financial statement and report from the North Dakota low-risk incentive fund (Legislative Audit and Fiscal Review Committee)
28-32-07	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)
28-32-10	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking (Administrative Rules Committee)
28-32-18	Determine whether an administrative rule is void (Administrative Rules Committee)
28-32-42	Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)
37-01-45	Receive projected costs from the Adjutant General regarding writing, publishing, and distributing a record of all North Dakota veterans, including those killed in action and missing in action, since statehood (Government Services 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)
38-08-04.5	Receive report from the Industrial Commission each biennium on the balance of the abandoned oil and gas well plugging and site reclamation fund and expenditures from the fund (Budget Section)
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 ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
46-02-05	Determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws (Legislative Procedure and Arrangements Committee)
47-30.1-24.1	Approve state agency relinquishment of unclaimed property belonging to that agency (Budget Section)
47-30.1-24.1	Receive report from the Commissioner of University and School Lands identifying every state agency that has not submitted a claim for property belonging to that agency (Budget Section)
48-01.2-25	Approve the change or expansion of, or any additional expenditure for, a state building construction project approved by the Legislative Assembly, but if within six months before or three months after a regular session the authorization is limited to changes in project scope and related expenditures resulting from an unforeseen emergency event (Budget Section)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)

NDCC Citation	Subject Matter (Committee)
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)
50-06.1-16	Receive annual report from the Committee on Employment of People with Disabilities detailing the committee's activities, goals, and progress in reaching these goals, and strategies and policies that can help the committee to realize its goals (Government 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)
54-03-32	Review any executive order issued by the President of the United States which has not been affirmed by a vote of the Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President (Judiciary 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)

NDCC Citation	Subject Matter (Committee)
54-06-37	Approve purchase or lease of aircraft by a state agency or entity of state government, other than the Adjutant General or the University of North Dakota School of Aviation, if the Legislative Assembly is not in session (Budget Section)
54-10-01	Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit of a state agency (Legislative Audit and Fiscal Review Committee)
54-10-01	Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)
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	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)
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)
54-17-40	Receive report from the Housing Finance Agency quarterly on the progress being made to reduce the overall number of housing units owned, master leased, or subsidized by cities, counties, school districts, or other employers of essential service workers, effective through June 30, 2015 (Budget Section)
54-17.8-07	Receive biennial report from the North Dakota Outdoor Heritage Advisory Board (Budget Section)
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 (Water Topics Overview Committee)
54-35-02.7	Legislative overview of the Garrison Diversion Project (Water Topics Overview Committee)
54-35-02.7	Prepare a schedule of priorities with respect to water projects (Water Topics Overview Committee)
54-35-02.7	Review during the 2013-14 interim water supply routes and alternatives for the Red River Valley Water Supply Project (Water Topics Overview Committee)
54-35-02.7	Study policies regarding the development and financing of municipal projects, including water treatment plants; pipelines, including pipeline expansion, public and industrial use of water, cost analysis of future project development, and ongoing maintenance cost of current and future projects; and technology, including the use of technology for permitting and electronic metering (Water Topics Overview Committee)
54-35-02.7	Work collaboratively with the State Water Commission to develop policies to further define the state role in major flood control projects (Water 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)
54-35-15.4	Request the State Auditor conduct an information technology compliance review (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)
54-35-24	Study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues (until August 1, 2017) (Commission on Alternatives to Incarceration)
54-35-25	Establish a policy regarding promotional expenses made on behalf of the Legislative Assembly (Legislative Procedure and Arrangements Committee)
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)

NDCC Citation	Subject Matter (Committee)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority (Government Services Committee)
54-44-04	Receive report from the Director of the Office of Management and Budget on the status of tobacco settlement funds and related information (Budget Section)
54-44-16	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)
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)
54-60-28	Receive report from the Department of Commerce semiannually regarding status of program to establish and administer an unmanned aircraft systems test site in cooperation with the University of North Dakota, the Aeronautics Commission, the Adjutant General, and private parties appointed by the Governor (Economic Impact Committee)
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 (Economic Impact Committee)
57-51-15	Receive report from the Tax Commissioner within 120 days after the end of each fiscal year from compiled reports from counties receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended (Taxation Committee)
57-51.2-02	Receive report from the Three Affiliated Tribes annually regarding investment of oil and gas tax receipts in essential infrastructure and fees, expenses, and charges the tribe imposes on the oil industry (Budget Section)

NDCC Citation	Subject Matter (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)
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)
65-05.1-06.3	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)

2009 Session Laws Citation	Subject Matter (Committee)
Chapter 29 § 5	Administer appropriation for legislative wing equipment and improvements (Legislative Procedure and Arrangements Committee)
Chapter 562 § 5	Receive report from the Tax Commissioner during the 2013-14 interim regarding the findings and recommendations of the commissioner's cost-benefit analysis during the 2009-11 and 2011-13 bienniums of the coal severance tax exemption for coal used in certain plants (Taxation Committee)

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 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)

2013 Session Laws Citation	Subject Matter (Committee)
Chapter 1 § 4	Receive report from the Governor annually regarding the status of gender balance on appointive boards, commissions, committees, and councils and within the Governor's appointive cabinet for the 2013-15 biennium (Judiciary Committee)
Chapter 2 § 7	Receive report from the Secretary of State semiannually during the 2013-14 interim regarding credit card usage rates and credit card fees paid by the Secretary of State (Budget Section)
Chapter 12 § 3	Receive report from the Department of Human Services after June 30, 2014, regarding any transfers of appropriation authority in excess of $50,000 between line items within subdivisions and between subdivisions for the 2013-15 biennium (Budget Section)
Chapter 12 § 17	Receive report from the Department of Human Services in December 2014 on the status of the eight-unit transitional living facility in the Southeast Human Service Center region (Budget Section)
Chapter 13 § 61	Receive report from the recipient of the grant during the 2014-15 school year to implement a certificate program that prepares individuals with autism spectrum disorder for employment in the technology sector regarding program graduates who found employment in the technology sector, their starting salaries, and their total compensation (Human Services Committee)
Chapter 15 § 42	Receive report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2015 (Economic Impact Committee)
Chapter 15 § 42	Receive report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2015 (Information Technology Committee)
Chapter 16 § 4	Receive report from the Housing Finance Agency during the 2013-14 interim regarding the use of funds for grants for flood-impacted housing assistance (Budget Section)

2013 Session Laws Citation	Subject Matter (Committee)
Chapter 18 § 6	Receive report from the State Historical Society by July 1, 2014, regarding the use of funds in the project pool line item (Budget Section)
Chapter 20 § 4	Approve State Water Commission expenditure of additional amounts that become available in the resources trust fund and the water development trust fund in excess of the 2013-15 appropriation (Budget Section)
Chapter 20 § 14	Receive report from the State Water Commission every six months during the 2013-14 interim regarding any changes made to the commission's priority projects list presented to the 63rd Legislative Assembly for the 2013-14 biennium (Budget Section)
Chapter 30 § 2	Receive report from the Department of Veterans' Affairs during the 2013-14 interim regarding any funds received to provide services to veterans exposed to Agent Orange, the grants provided, and the outcomes of the services provided (Budget Section)
Chapter 32 § 11	Consider implementing during the 64th Legislative Assembly a limited bill analysis report pilot project to provide bill analysis reports similar to analysis reports prepared in other states (Legislative Procedure and Arrangements Committee)
Chapter 34 § 21	Receive report from the State Board of Higher Education during the 2013-14 interim regarding the distribution of funds from the performance funding pool (Higher Education Funding Committee)
Chapter 34 § 22	Receive annual reports from the State Board of Higher Education during the 2013-14 interim regarding the status of the consolidation of North Dakota University System information technology services, including the location of staff members providing those services (Budget Section)
Chapter 34 § 22	Receive annual reports from the State Board of Higher Education during the 2013-14 interim regarding the status of the consolidation of North Dakota University System information technology services, including the location of staff members providing those services (Information Technology Committee)
Chapter 34 § 23	Receive report from the State Board of Higher Education if the Research Enterprise and Commercialization building is purchased before July 1, 2015 (Budget Section)
Chapter 34 § 24	Receive periodic reports from the State Board of Higher Education during the 2013-14 interim regarding funds distributed from the capital projects contingency pool (Budget Section)
Chapter 34 § 31	Approve North Dakota State University request for increased spending authorization for Minard Hall project (Budget Section)
Chapter 34 § 31	Receive report from North Dakota State University regarding the status of the Minard Hall project (Budget Section)
Chapter 34 § 38	Receive report from the State Board of Higher Education before October 1, 2014, regarding the number of matching grants that were sought, the number that were awarded, and the manner in which the grants were used as provided under Sections 5 through 10 of 2013 Senate Bill No. 2003 for the advancement of academics (Higher Education Funding Committee)
Chapter 43 § 8	Approve Department of Transportation recommendation for new license plate design (Budget Section)
Chapter 45 § 16	Receive report from the Department of Commerce before September 1, 2014, on the findings and recommendations of the department's study to evaluate value-added market opportunities related to renewable energy resources and oil and gas (Energy Development and Transmission Committee)
Chapter 46 § 4	Receive plan of the Office of Management and Budget by July 1, 2014, to move the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center (Government Services Committee)
Chapter 46 § 4	Receive report from the Office of Management and Budget during the 2013-14 interim regarding options for the possible relocation of the Missouri River Correctional Center to a site adjacent to the Youth Correctional Center (Budget Section)
Chapter 46 § 6	Receive report from the Department of Corrections and Rehabilitation annually on the department's prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing (Budget Section)
Chapter 49 § 36	Receive report from the North Dakota Economic Development Foundation before September 1, 2014, regarding progress made toward recommendations provided as part of the 2020 and Beyond Initiative and any recommendations for future legislation (Economic Impact Committee)
Chapter 49 § 37	Receive report from the Department of Commerce before June 1, 2014, on the Experimental Program to Stimulate Competitive Research and Research North Dakota, including the Research North Dakota venture investment program (Budget Section)
Chapter 50 § 3	Receive report from the Department of Career and Technical Education during the 2013-14 interim regarding performance measures of the science, technology, engineering, and mathematics program (Budget Section)
Chapter 51 § 13	Receive findings of the State Water Commission resulting from its study of the Mouse River and its tributaries during the 2013-14 interim (Water Topics Overview Committee)

2013 Session Laws Citation	Subject Matter (Committee)
Chapter 52 § 8	Receive findings and recommendations from the Office of Management and Budget by March 31, 2014, regarding its information technology relocation and consolidation study of information technology equipment operated by the Attorney General and other agencies (Budget Section)
Chapter 52 § 8	Receive findings and recommendations from the Office of Management and Budget by March 31, 2014, regarding its information technology relocation and consolidation study of information technology equipment operated by the Attorney General and other agencies and receive any proposed legislation by July 1, 2014 (Information Technology Committee)
Chapter 52 § 9	Receive findings and recommendations from the Information Technology Department before January 1, 2014, regarding its study of all state agencies' information technology desktop support to determine the feasibility and desirability of centralization of desktop support services (Budget Section)
Chapter 52 § 9	Receive findings and recommendations from the Information Technology Department before January 1, 2014, regarding its study of all state agencies' information technology desktop support to determine the feasibility and desirability of centralization of desktop support services (Information Technology Committee)
Chapter 52 § 9	Receive report from the Office of Management and Budget regarding the findings, recommendations, and any legislation required to implement the recommendations of the Information Technology Department's desktop support study (Budget Section)
Chapter 60 § 3	Receive report from the Department of Veterans' Affairs during the 2013-14 interim regarding the status of the service dog training program, including benefits to veterans, number of applicants, and number of service dogs provided (Government Services Committee)
Chapter 67 § 1	Approve conveyance of North Central Research Extension Center and Williston Research Extension Center property (Budget Section)
Chapter 129 § 1	Receive report from the Board of University and School Lands before October 1, 2014, on the outcome of the board's study of options to address concerns of landowners adjacent to land under the control of the United States Army Corps of Engineers surrounding Lake Sakakawea and Lake Oahe (Water Topics Overview Committee)
Chapter 131 § 1	Receive findings of the North Dakota University System before November 15, 2013, of its study of the out-of-state programs in veterinary medicine, optometry, and dentistry; the access of North Dakota students to those programs; and the state's needs for dentists, optometrists, and veterinarians (Health Services Committee)
Chapter 137 § 15	Receive periodic reports from the State Board of Higher Education during the 2013-14 interim which provide status updates on the progress of the board in implementing and administering Chapter 15-18.1, regarding authorizations to operate postsecondary educational institutions (Higher Education Funding Committee)
Chapter 150 § 2	Receive report, with recommendations, from the Superintendent of Public Instruction before June 1, 2014, regarding the Superintendent's study of the development, delivery, and administration of comprehensive early childhood care and early childhood education in this state (Education Funding Committee)
Chapter 217 § 12	Receive report from the State Department of Health semiannually during the 2013-14 interim on the status of the tribal public health unit pilot project (Tribal and State Relations Committee)
Chapter 221 § 5	Approve expenditure of more than $4 million by the Department of Transportation to purchase replacement airplanes for the department's fleet (Budget Section)
Chapter 257 § 50	Receive report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2015 (Economic Impact Committee)
Chapter 257 § 50	Receive report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2015 (Information Technology Committee)
Chapter 376 § 8	Receive report from the Department of Human Services regarding the impact of changing the eligibility requirement for the child care assistance program from 50 percent of the state median income to 85 percent and beginning July 1, 2014, reducing copay requirements for the child care assistance program (Human Services Committee)
Chapter 426 § 2	Receive inventory from the Housing Finance Agency during the 2013-14 interim regarding government programs providing residential and commercial development assistance which identifies program overlap and gaps (Economic Impact Committee)
Chapter 447 § 7	Receive report from the Tax Commissioner before January 1, 2014, on the development of rules for detailed and efficient administration of Section 57-01-05 regarding supervision of assessment (Taxation Committee)
Chapter 471 § 8	Receive report from the Department of Commerce annually on the use of one-time funding during the 2013-15 biennium for the grant program for nursing homes, basic care facilities, and providers that serve individuals with developmental disabilities located in oil-producing counties (Budget Section)

2013 Session Laws Citation	Subject Matter (Committee)
Chapter 471 § 10	Receive report from the Department of Human Services annually on the use of one-time funding during the 2013-15 biennium for the grant program for critical access hospitals in oil-producing counties (Budget Section)
Chapter 471 § 11	Receive report from the Attorney General annually on the use of one-time funding during the 2013-15 biennium for grants to law enforcement agencies in oil-impacted counties where crime-related activities have increased or in other counties experiencing crime-related activities originating in oil-impacted counties, for crime-related needs of the Attorney General's office, and for the development of a uniform law enforcement and custody manual (Budget Section)
Chapter 471 § 12	Receive report from a representative of a hub city annually on the use of funding received from allocations from the oil and gas gross production tax under Section 57-51-15 (Budget Section)
Chapter 490 § 26	Receive reports from the Independent Water Providers and the Western Area Water Supply Authority on a regular basis (Water Topics Overview Committee)
Chapter 490 § 26	Monitor, in collaboration with the Independent Water Providers, and Western Area Water Supply Authority, and the State Water Commission, water usage, rates, and market share, and make recommendations to assure the state's ability to maintain its payment schedule (Water Topics Overview Committee)
Chapter 543	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 Chairman of the Legislative Management to interim committees.

Responsibility	Interim Committee
Study the permitting, regulation, and siting of oilfield waste landfills and the disposal of waste related to oil and gas development (Legislative Management Chairman directive)	Energy Development and Transmission Committee
Review the State Board of Higher Education's activities relating to any agreement or financing associated with the purchase of the Research Enterprise and Commercialization building from the University of North Dakota Research Foundation on the campus of University of North Dakota (Legislative Management Chairman directive)	Government Finance Committee
Study funding provided by the state for autopsies and state and county responsibility for the cost of autopsies, including the feasibility and desirability of counties sharing in the cost of autopsies performed by the State Department of Health and University of North Dakota School of Medicine and Health Sciences (Senate Bill No. 2004 § 9)	Health Services Committee
Study the intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011 (Senate Bill No. 2018 § 39)	Judiciary Committee
Review issues relating to the recently enacted changes to the state's driving under the influence laws under 2013 House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/ sobriety program and the drug court option for offenders (Legislative Management Chairman directive)	Judiciary Committee
Study state economic development tax exemptions, including consideration of whether a regular review process should be established for state economic development tax incentives to ensure regular consideration of whether incentives are still serving the intended purpose for which they were created (Legislative Management Chairman directive)	Taxation Committee
Receive and review the information reported by Job Service North Dakota under the appropriation provided by 2013 House Bill No. 1358, directing Job Service North Dakota to upgrade collection and use of employment data to correctly identify all employees who should be included for statistical purposes in oil and gas-related employment, including employees of refineries and gas plants and oil and gas transportation services (Legislative Management Chairman directive)	Taxation Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Management for study during the 2013-14 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
1008 § 4	Study civil penalties assessed and collected by state agencies, including a review of the funds into which the collections are deposited and the appropriateness of the use of funds collected
1008 § 5	Study the feasibility and desirability of constructing a new metrology laboratory
1012 § 14	Study the Developmental Center in Grafton (Life Skills and Transition Center), including future use, reduction in size, and any change of scope for the Developmental Center
1038 § 4	Study autism spectrum disorder services, including the most feasible service delivery system for individuals not served in the developmental disability system who have an autism spectrum disorder
1128 § 3	Study marriage, including the positive influence of marriage on society, children, and government spending; and the use of and the need for marital agreements in the state
1302 § 23	Study the administrative procedure for driving under the influence of alcohol and drugs, including a review of the use of ignition interlock devices and the effect of an individual refusing to submit to chemical testing
1424 § 1	Study the feasibility and desirability of participating in the provision of nontraditional healing therapies, including massage, healing touch, reflexology, stress management, yoga, and hyperbaric chamber treatments, for North Dakota veterans, military personnel, and their families; and gather information regarding the needs of women veterans
2003 § 39	Study legal services provided by attorneys in executive branch state agencies, review of the services provided by attorneys in each agency, supervision of the attorneys in each agency, whether the attorneys are classified as assistant or special assistant attorneys general, and the use of contracted legal services by each agency
2012 § 17	Study state railroad assistance programs, including review of existing programs and funding levels and whether the existing programs and funding levels are adequate to meet current industry needs
2012 § 19	Study potential statutory or administrative changes that could be made to assist parties in the fuel supply chain in complying with federal renewable fuel standards, including compliance with the renewable identification number credits requirements
2012 § 20	Study the use of branch offices by the Department of Transportation, including a review of the structure of agreements with operators of branch offices, the number of motor vehicles registered at each office, the current locations of offices, the quality of data provided by the offices, the staffing needs of the offices, and the fees received by offices for services provided; and a review of the future use of branch offices, including office locations, alternative uses for facilities, and other changes that may promote efficiencies
2018 § 40	Study the development of a children's science center in the city where the State Capitol is located, including consideration of the feasibility and desirability of providing state assistance to develop a children's science center
2036 § 9	Study development of standard procedures and classification of accounts to provide a means of accumulating financial information that will be uniform for all counties, regardless of their size or various approaches to budgeting and accounting that may be in use, with the objective of achieving uniformity of financial information to guide preparation of financial reports required by law and preparation of management reports on county government performance
2072 § 8	Study the availability of raw or unpasteurized milk, for human consumption, in this state, including the nature and extent of governmental oversight with the respect to the safety of the milk; the health of the animals used to produce the milk; and the conditions under which the product is produced, transferred, or obtained
2128 § 8	Study the Bank of North Dakota's foreclosure procedures, specifically foreclose by advertisement
2244 § 1	Study the availability of and access to child care services in the state and the state's role in ensuring available and accessible child care services in the state
2339 § 1	Study creation of an inventory of and strategic plan for state, local, and federal programs relating to residential and commercial development and related infrastructure needs, including the option to create a low-interest revolving loan program for municipal infrastructure
3001	Study issues related to development of group housing and crew camps, including infrastructure demands, health and safety requirements, regulation, and enforcement of regulatory violations
3016	Study the use of natural gas as fuel in motor vehicles
3021	Study the feasibility and desirability of providing assistance to obtain rural water for households with arsenic and other harmful substances in the well water
3023	Study the feasibility and desirability of creating and encouraging the use of paved bike paths throughout the state
3031	Study special enforcement measures in high-fatality zones on highways in this state

Bill or Resolution No.	Subject Matter
3038	Study the statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funding to determine whether there are viable options to meet the needs of our state without having the federal government's oversight and involvement, which state needs can be met if federal funding associated with undesirable regulation or excessive direct and indirect costs are refused, and whether the federal fiscal impact is a significant and necessary factor in assenting to the continuance of federal government involvement in the state's management processes
4007	Study the growth in use of state False Claims Acts with qui tam provisions in state and local taxation matters and whether that approach is feasible and desirable in North Dakota
4012	Study state alternatives to the statutory and regulatory requirements placed on North Dakota schools and school districts by the United States Department of Education, determine whether there are viable options to achieve the federal government's goals without having the federal government's oversight and involvement, and determine whether the federal fiscal impact is a significant and necessary factor in assenting to the continuance of federal government involvement in this state's educational process
4019	Study early childhood services in the state, including the United States Department of Agriculture's food reimbursement program for early childhood service providers and the income guidelines for the Department of Human Services' child care assistance program
4022	Study the desirability of and the potential process for licensing or certifying mechanical contractors

2015 NORTH DAKOTA LEGISLATIVE MANAGEMENT BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1026 - Ginseng Law Rewrite. This bill rewrites the laws pertaining to ginseng. (Agriculture Committee)

House Bill No. 1027 - Milk Marketing Board Rewrite. This bill rewrites the laws pertaining to the North Dakota Milk Marketing Board. (Agriculture Committee)

House Bill No. 1028 - Agriculture Laws Rewrite. This bill continues the study of North Dakota Century Code provisions that pertain to agriculture, for purposes of eliminating those 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. (Agriculture Committee)

House Bill No. 1029 - Abuse and Neglect of a Child. This bill separates the offenses of abuse of a child and neglect of a child into different statutory provisions and eliminates the Class B felony penalty for the offense of neglect of a child. (Commission on Alternatives to Incarceration)

House Bill No. 1030 - Departure from Mandatory Sentences. This bill allows a court to depart from a mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public. (Commission on Alternatives to Incarceration)

House Bill No. 1031 - Energy Development Highway Corridor Funding. This bill transfers $75 million per biennium from the oil and gas production tax to the state highway fund for major improvements and construction of highway corridors impacted by energy development with a priority for four lanes for United States Highway 85. (Energy Development and Transmission Committee)

House Bill No. 1032 - Abandoned Oil and Gas Well Reclamation Fund. This bill raises the deposit in the abandoned oil and gas well plugging and site reclamation fund from an amount not exceeding $5 million to an amount not exceeding $10 million per year and raises the cap for the fund from $75 million to $100 million. (Energy Development and Transmission Committee)

House Bill No. 1033 - Legacy Fund Definitions and Earnings. This bill provides several definitions for constitutional provisions relating to the legacy fund and clarifies the process used to determine limitations on expenditures from the legacy fund. The bill also provides that earnings transferred from the legacy fund to the general fund at the end of a biennium are to be transferred back to the legacy fund and become principal unless certain criteria are met. (Government Finance Committee)

House Bill No. 1034 - Use of Foundation Aid Stabilization Fund and Budget Stabilization Fund. This bill clarifies the use of the foundation aid stabilization fund and budget stabilization fund for state school aid payments in the event of a general fund revenue shortfall. (Government Finance Committee)

House Bill No. 1035 - Health Care Delivery System Study. This bill provides for the Legislative Management to continue its ongoing study of the needs and challenges of the North Dakota health care delivery system. The study may include monitoring the implementation of the Affordable Care Act, examining Medicaid Expansion and Medicaid reform, and considering the feasibility of developing a state-based plan for a health care model that will comply with federal health care reform in a manner that will provide high-quality access and affordable care for North Dakota citizens. The University of North Dakota School of Medicine and Health Sciences Advisory Council shall make periodic reports to the Legislative Management on the status of the biennial report developed pursuant to Section 15 52-04. (Health Care Reform Review Committee)

House Bill No. 1036 - Programs to Assist Health Professionals Report. This bill directs the State Department of Health during the 2015-16 interim to evaluate state programs to assist health professionals, including behavioral health professionals, with a focus on state loan repayment programs for health professionals. During the 2015-16 interim the State Department of Health shall make periodic reports to the Legislative Management on the outcome of the study, including presentation of recommended legislation. (Health Care Reform Review Committee)

House Bill No. 1037 - Medicaid Cost-Sharing Report. This bill directs the Department of Human Services during the 2015-16 interim to study options for implementing income-based cost-sharing provisions for the Medicaid and Medicaid Expansion programs. This study must include consideration of provider recovery rates for copayments, information technology capacity for implementing income-based cost-sharing provisions, consideration of how income-based cost-sharing has been implemented by other states, analysis of the costs and benefits of cost-sharing, and consideration of whether cost-sharing improves the effectiveness of Medicaid and Medicaid Expansion programs. Before July 1, 2016, the Department of Human Services shall report to the Legislative Management the outcome of the study and the associated legislative recommendations and related draft legislation. (Health Care Reform Review Committee)

House Bill No. 1038 - Telemedicine Insurance Coverage. This bill provides the Public Employees Retirement System (PERS) uniform group insurance must provide medical benefits coverage under a policy that provides coverage for health care services provided by a health care provider or health care facility by means of telemedicine which are the same as the policy coverage of in-person health care services provided by a health care provider or health care facility. The mandate is limited to the PERS system, the mandate expires in two years, the bill directs PERS to study the impact of the bill during that two-year period, and the bill directs PERS to introduce to the 65th Legislative Assembly a bill to extend the mandate of coverage to the private health insurance market. (Health Care Reform Review Committee)

House Bill No. 1039 - Substance Abuse Insurance Coverage. The bill amends the group health policy mandate for substance abuse coverage. The bill applies the substance abuse coverage requirements to all health insurance policies; removes the coverage requirement formulas for different types of substance abuse services; and clarifies required coverage must include inpatient treatment, treatment by partial hospitalization, residential treatment, and outpatient treatment. (Health Care Reform Review Committee)

House Bill No. 1040 - Involuntary Commitment. The bill revises the involuntary commitment proceeding law to update the language and to expand the statutory authority of advanced practice registered nurses to authorize advanced practice registered nurses to act as independent expert examiners in involuntary commitment proceedings. (Health Care Reform Review Committee)

House Bill No. 1041 - Medicaid Expansion Contracts. The bill amends the Medicaid Expansion law to provide if the Department of Human Services implements the Medicaid Expansion program through a contract with a private carrier, the department shall issue one request for proposal for the health insurance component of Medicaid Expansion and shall issue one request for proposal for the pharmacy benefit management component of the Medicaid Expansion or shall provide the pharmacy benefit management services through the Department of Human Services. The bill provides if the pharmacy benefit management component is not provided through the Department of Human Services, the contract between the department and the pharmacy benefit manager must include specified provisions that address passthrough pricing, transparency, and audit provisions. (Health Care Reform Review Committee)

House Bill No. 1042 - Death Investigation Training and Planning. This bill provides appropriations to the State Department of Health for information technology costs related to the electronic review of death records and for the reimbursement of travel costs related to county coroner training and planning meetings. (Health Services Committee)

House Bill No. 1043 - Tuition Freeze at Two-Year Institutions. This bill prohibits tuition increases at North Dakota University System two-year institutions during the 2015-17 biennium and provides a general fund appropriation of $2.5 million to offset the fiscal impact of the tuition freeze. (Higher Education Funding Committee)

House Bill No. 1044 - Higher Education Student Financial Assistance Programs. This bill increases the maximum student financial assistance grant award to $2,000 and provides a general fund appropriation of $30,690,000 which is estimated to be sufficient to provide grants to 8,000 full-time and part-time students. This bill also increases the amount of the academic and career and technical education scholarships for new recipients to $1,000 per semester with a lifetime maximum of $8,000 and provides a general fund appropriation of $17,426,748 to fund existing and new program recipients. (Higher Education Funding Committee)

House Bill No. 1045 - Private Postsecondary Institution Reporting Requirements. This bill requires private postsecondary institutions to notify the State Board of Higher Education or Board of Career and Technical Education of any changes to the institution's accreditation status. This bill also requires private postsecondary institutions to notify current or potential students if a program or course complies with the certification requirements of the appropriate professional board in the state. (Higher Education Funding Committee)

House Bill No. 1046 - Traumatic Brain Injury Registry. This bill provides appropriations to the State Department of Health for a traumatic brain injury registry and to the Department of Human Services for traumatic brain injury

registry marketing and training, traumatic brain injury regional resource facilitation, and brain injury services, including return to work programming. (Human Services Committee)

House Bill No. 1047 - Prevocational Services Exemption. This bill exempts providers of prevocational services licensed or certified by the Department of Human Services from registering with the Labor Commissioner. (Human Services Committee)

House Bill No. 1048 - Behavioral Health Licensing Boards Oversight. This bill establishes an oversight system and reciprocity language for behavioral health licensing boards. (Human Services Committee)

House Bill No. 1049 - Behavioral Health Professional Loans and Grants. This bill provides appropriations to the State Board of Higher Education, the Bank of North Dakota, and the Department of Human Services for forgivable loans and grants relating to certain behavioral health professionals. (Human Services Committee)

House Bill No. 1050 - Volunteer-Based Home and Community-Based Services. This bill provides an appropriation to the Department of Human Services to assist communities in establishing organizations to provide volunteer-based services for elderly and disabled persons. (Human Services Committee)

House Bill No. 1051 - Higher Education Information Technology - Systemwide Email - Email Retention - Records Retention Policies. This bill requires all institutions under the control of the State Board of Higher Education to use systemwide email and to retain all emails for five years. This bill also clarifies that the State Board of Higher Education and the institutions under the control of the State Board of Higher Education are included in the state's records retention policies. (Information Technology Committee)

House Bill No. 1052 - Higher Education Information Technology Reports. This bill requires the Chief Information Officer of the University System rather than the commissioner of the State Board of Higher Education to coordinate with the Information Technology Department and to report to the Information Technology Committee. (Information Technology Committee)

House Bill No. 1053 - Desktop Support Services. This bill requires certain state agencies to obtain centralized desktop support services from the Information Technology Department. This bill also requires the department to make available five major desktop support services for all state agencies, including procurement services, information technology hardware inventory management services, a standardized system to track user issues, antivirus software, and mobile device management services. (Information Technology Committee)

House Bill No. 1054 - Application and Use of Modifiers. This bill restricts the use of modifiers in agricultural property assessments to those contained in a single schedule of modifiers adopted by the State Supervisor of Assessments. The bill provides that the single schedule of modifiers would be provided to all assessors as well as a copy of guidelines regarding how modifiers must be applied and instructions on how to use available soil survey resources. The bill requires a site inspection be conducted to confirm the existence of any conditions warranting a modification prior to an approved modifier being applied to reduce the soil type valuation of an area. (Taxation Committee)

House Bill No. 1055 - Converting Mill Rates to Dollars. This bill eliminates the use of mills in calculating property taxes. The bill converts the numerous references within the Century Code regarding use of a number of mills for property tax determinations into use of a number of cents per $1,000 of true and full value. The conversion is effective starting in January 2016. (Taxation Committee)

House Bill No. 1056 - Ballot Approval of Excess Fire District Levies. This bill requires rural fire districts receive a majority vote by mail ballot election prior to increasing its levy authority. (Taxation Committee)

House Bill No. 1057 - Notice of Assessment Increases. This bill provides for notice to property owners if the assessment on the owner's property increased by 10 percent and $3,000 from the prior year's assessment. The notice requirement applies to city, township, and county boards of equalization and requires the entity making the increase to notify the owner. The bill also provides for the requirement that a local board of equalization provide reasonable advance notice to a property owner, and opportunity for that property owner to appear, if the board is considering an increase on a property's assessment by 15 percent or more over the prior year's assessment. (Taxation Committee)

House Bill No. 1058 - Notice of Budget Hearings. This bill provides for notice of the time and place for public budget hearings to each owner of property in a political subdivision if the political subdivision is considering a property tax levy increase in a greater number of mills than a zero increase number of mills. The bill also allows for

consolidated notices to be sent to property owners owning more than one parcel of property in the taxing district. The bill eliminates the previous requirement for newspaper publication of budget hearings. (Taxation Committee)

House Bill No. 1059 - State-Paid Property Tax Relief Credit. This bill continues the 12 percent state-paid property tax relief credit enacted during the 2013 legislative session. The bill appropriates $230 million for allocations of the state-paid property credit for the 2015-17 biennium. (Taxation Committee and Advisory Commission on Intergovernmental Relations)

House Bill No. 1060 - Sharing of Confidential Information. This bill allows for the sharing of otherwise confidential information by Job Service North Dakota and the Tax Department for purposes of providing information to the Department of Commerce for evaluating tax incentives. The bill provides for safeguards in restricting the use and disclosure of that information by the Department of Commerce. (Taxation Committee)

House Bill No. 1061 - Water Topics Overview Committee Duties. This bill removes areas that already had been studied from the statutory duties of the Water Topic Overview Committee and provides that the committee may work collaboratively with the State Water Commission and may meet with the State Water Commission. (Water Topics Overview Committee)

House Concurrent Resolution No. 3001 - 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 64th Legislative Assembly through September 30, 2017. (Budget Section)

House Concurrent Resolution No. 3002 - Restitution Study. This resolution provides for a Legislative Management study of restitution for criminal acts. (Commission on Alternatives to Incarceration)

House Concurrent Resolution No. 3003 - Study of State Employee Health Insurance Premiums. This concurrent resolution provides for a Legislative Management study of state contributions to state employee health insurance premiums, including the effect of the federal Affordable Care Act on the state uniform group insurance program. (Government Finance Committee)

House Concurrent Resolution No. 3004 - Death Investigation Services Study. This resolution directs the Legislative Management to continue to study medicolegal death investigation in the state and how current best practices, including authorization, reporting, training, certification, and the use of information technology and toxicology, can improve death investigation systems in the state. (Health Services Committee)

House Concurrent Resolution No. 3005 - Brain Injury Study. This resolution provides for the Legislative Management to continue the study of a comprehensive system of care for individuals with brain injury during the 2015-16 interim. (Human Services Committee)

House Concurrent Resolution No. 3006 - Tribal Youth Services Study. This resolution provides for a Legislative Management study of the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts. (Tribal and State Relations Committee)

SENATE

Senate Bill No. 2024 - Township Zoning Authority. Allows a township that unilaterally transferred its zoning authority to the county to enter a mutual agreement with that county to regain the zoning authority. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2025 - Apiaries Law Rewrite. This bill rewrites the laws pertaining to apiaries. (Agriculture Committee)

Senate Bill No. 2026 - Professional Soil Classifiers Law Rewrite. This bill rewrites the laws pertaining to the State Board of Registration for Professional Soil Classifiers. (Agriculture Committee)

Senate Bill No. 2027 - Term of Supervision and Probation. This bill reduces the length of probation for most felony offenses, except sex offenses and violent crimes, from five years to three years; reduces the length of probation for misdemeanor offenses from two years to 360 days; provides the maximum length of probation extension for violating the conditions of probation is 360 days; allows a court to authorize the Department of Corrections and Rehabilitation to terminate supervision after 18 months if the offender has complied with the conditions of probation; and allows up to 5 nonsuccessive periods of incarceration within a 12-month period, which may not exceed 48 hours, as an alternative to a revocation of probation. (Commission on Alternatives to Incarceration)

Senate Bill No. 2028 - Mandatory Transfer of Juveniles to Adult Court. This bill eliminates the mandatory transfer of a juvenile to adult court for offenses related to manufacture, delivery, or possession of controlled substances. (Commission on Alternatives to Incarceration)

Senate Bill No. 2029 - Probation Length. This bill removes the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession, and provides a judge discretion with respect to the length of the probation within those statutory limits. (Commission on Alternatives to Incarceration)

Senate Bill No. 2030 - Penalty for Possession of Drug Paraphernalia. This bill reduces the penalty for possession of paraphernalia intended for the use of a controlled substance from a Class C felony to a Class A misdemeanor and reduces the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor. (Commission on Alternatives to Incarceration)

Senate Bill No. 2031 - Education Funding. This bill establishes per student funding levels of $9,482 and $9,766 for the 2015-17 biennium, provides $125 million for school construction and sets aside another $100 million in the event additional funds are required for school construction, provides a grant for certain school districts having high numbers of English language learners, and through a recalibration of weighting factors, provides additional money for professional development, at-risk students, English language learners, alternative schools, and regional education associations. (Education Funding Committee)

Senate Bill No. 2032 - Strategic Planning Authority. This bill creates an oil and gas development strategic planning authority to develop a comprehensive strategic plan to address oil and gas affected community's needs, with a focus on infrastructure needs. (Energy Development and Transmission Committee)

Senate Bill No. 2033 - Triggered Supplemental Funding. This bill provides supplemental funding to political subdivisions when oil and gas tax revenues exceed legislative forecast by providing an automatic trigger mechanism with an appropriation of $200 million from the strategic investment and improvements fund if in the first six months of the biennium revenues exceed the forecast by 20 percent. (Energy Development and Transmission Committee)

Senate Bill No. 2034 - Pipeline Sales Tax Exemption. This bill creates a sales and use tax exemption for materials used for oil gathering pipelines. (Energy Development and Transmission Committee)

Senate Bill No. 2035 - Fertilizer Facility Sales Tax Exemption. This bill creates a sales and use tax exemption for tangible personal property used for a fertilizer or chemical processing facility and is retroactive to include all of 2015. (Energy Development and Transmission Committee)

Senate Bill No. 2036 - Beneficiated Coal Exemption. This bill provides for an exemption from the coal conversion facilities privilege tax for beneficiated coal used within a coal conversion facility and removes the sunset on the sales and use tax exemptions for beneficiated coal and the severance tax exemption for coal used in certain plants. (Energy Development and Transmission Committee)

Senate Bill No. 2037 - Wind Generator Taxation. This bill increases the property tax valuation on wind generation units commenced before January 1, 2015, and completed before January 1, 2017, from 1.5 to 3 percent, provides a grace period for the income tax credit relating to those wind towers, removes the sunset on the sales tax exemption for wind, and removed the $5 million cap on the sales and use tax exemption for new coal mines located in this state. (Energy Development and Transmission Committee)

Senate Bill No. 2038 - State Employee Retirement Plan. This bill provides for changes to the main state employee retirement plan to require eligible employees hired for the first time after December 31, 2015, to enroll in the defined contribution plan under Chapter 54-52.6, rather than the defined benefit plan. State employees currently in the defined benefit plan and those hired before January 1, 2016, who elect to participate in the defined benefit plan will continue to participate in the defined benefit plan. (Government Finance Committee)

Senate Bill No. 2039 - School Construction Assistance Loan Fund and Public Employee Retirement Stabilization Fund. This bill establishes a school construction assistance loan fund and a public employee retirement stabilization fund and provides for a contingent transfer of $250 million into the school construction assistance loan fund and a contingent transfer of $200 million into the public employee retirement stabilization fund. (Government Finance Committee)

Senate Bill No. 2040 - Bismarck Agencies Master Plan. This bill provides an appropriation to the Office of Management and Budget to develop a master plan for all state agencies with a physical location in the Bismarck area. (Government Services Committee)

Senate Bill No. 2041 - State Hospital and James River Correctional Center Master Plan. This bill provides an appropriation to the Department of Human Services to develop a master plan in conjunction with the Department of Corrections and Rehabilitation for the State Hospital and the James River Correctional Center. (Government Services Committee)

Senate Bill No. 2042 - Income Tax Deduction. This bill provides a state income tax deduction for military retirement pay. (Government Services Committee)

Senate Bill No. 2043 - Community Paramedic Services Reimbursement. This bill requires the Department of Human Services to adopt rules entitling licensed community paramedics to payment for health-related services provided to recipients of medical assistance, subject to limitations and exclusions the department determines necessary consistent with limitations and exclusions of other medical assistance services. (Health Services Committee)

Senate Bill No. 2044 - Traumatic Brain Injury Flex Fund. This bill provides an appropriation to the Department of Human Services for a traumatic brain injury flex fund program. (Human Services Committee)

Senate Bill No. 2045 - Addiction Treatment Services Vouchers. This bill provides an appropriation to the Department of Human Services for a voucher system for addiction treatment services. (Human Services Committee)

Senate Bill No. 2046 - Behavioral Health Services. This bill provides medical assistance coverage for behavioral health services provided by licensed marriage and family therapists and licensed professional clinical counselors and directs the Department of Human Services to develop an outcomes-based data system for behavioral health services. This bill also provides an appropriation to the Department of Human Services for adult and youth substance abuse treatment services, provides an appropriation to the Highway Patrol for mental health first aid training for state and local law enforcement personnel, and provides for a Legislative Management study of the structure and services of the Department of Human Services during the 2015-16 interim. (Human Services Committee)

Senate Bill No. 2047 - Qualified Mental Health Professionals. This bill expands the definition of qualified mental health professional as it relates to residential treatment centers for children. (Human Services Committee)

Senate Bill No. 2048 - Behavioral Health Assessment and Training. This bill provides appropriations to the Department of Human Services for an adult and youth mental health assessment network and a pilot project to develop planning protocols for discharge or release of individuals with behavioral health issues and to the Department of Public Instruction to provide mental health first aid training for teachers and child care providers. This bill also provides for a Legislative Management study of mental health screening and assessment programs for children and continues the study of behavioral health needs of youth and adults in the 2015-16 interim. (Human Services Committee)

Senate Bill No. 2049 - Mental Health Professionals and Personnel. This bill includes licensed marriage and family therapists in the definitions of mental health professional and mental health personnel, as they relate to commitment procedures and judicial remedies. (Human Services Committee)

Senate Bill No. 2050 - Service Payments for Elderly and Disabled Eligibility. This bill prohibits the Department of Human Services from requiring an individual to apply for services under the state's medical assistance program as a condition of being eligible to apply for services under the service payments for elderly and disabled program. (Human Services Committee)

Senate Bill No. 2051 - Information Technology Hardware Relocation and Consolidation. This bill exempts the information technology hardware operated by the Attorney General's office from consolidation and relocation. This bill also removes the ability of the Office of Management and Budget to grant exemptions from the required use of hosting services and other information technology-related services resulting in the relocation and consolidation of the information technology hardware operated by the Department of Mineral Resources, Public Service Commission, and State Water Commission. (Information Technology Committee)

Senate Bill No. 2052 - Driving Under the Influence. This bill makes several changes to the use of the 24/7 sobriety program for adult and juvenile driving under the influence (DUI) offenders; limits the look-back period to 15 years for fourth and subsequent DUI offenses; provides, for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal are deemed to be a single violation; provides a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information; requires the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test; and provides for the suspension of a portion of a mandatory sentence if the defendant successfully completes a drug court program approved by the Supreme Court. (Judiciary Committee)

Senate Bill No. 2053 - Constitutional and Statutory Revision. This bill makes technical corrections throughout the North Dakota Century Code. (Judiciary Committee)

Senate Bill No. 2054 - Assessor Certification Requirements. This bill replaces existing assessor classifications with a single status of certified assessor. The bill requires all assessors be certified and receive the same level of training, which would increase the current amount of training required for township and small city assessors. The bill requires all assessors to receive certification under the new training requirements by 2017. (Taxation Committee and Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2055 - Electric Industry Property Reporting. This bill provides reporting requirements for electric transmission, distribution, and generation companies. The bill includes requirements for electric generation company reports for location and rated capacity of wind generators and grid-connected generators within counties. The bill requires the reports be filed at the same time transmission and distribution company reports are required to be filed. The reporting requirements are effective starting in 2016. (Taxation Committee and Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2056 - Levy Requests by Unelected Governing Bodies. This bill provides that property tax levies requested by unelected governing bodies and boards are subject to adjustment by the board of county commissioners or city governing body. The bill also provides authority for boards of county commissioners and city governing bodies to request financial information from those bodies requesting approval of property tax levies. (Taxation Committee)

Senate Bill No. 2057 - Regular Evaluation of State Incentives. This bill provides for regular review of state economic development tax incentives. The bill provides for review of each of the selected incentives every six years by an interim committee designated by the Legislative Management. The bill provides for specific factors that are to be taken into consideration when reviewing incentives. This bill also provides for the committees receipt of data and analysis from various agencies and for the committees delivery of its findings and recommendations to the Legislative Management. (Taxation Committee)

Senate Bill No. 2058 - Resources Trust Not for Funding State Water Commission. This bill prohibits the principal and income from the resources trust fund being available to the State Water Commission, or any employees or appointees of the State Water Commission, for wages, salaries, and operating expenses unless otherwise provided by law. (Water Topics Overview Committee)

Senate Bill No. 2059 - Workers' Compensation Employment Offers. This bill provides that for workers' compensation wage loss benefits, to establish that an employer made a job offer to an injured employee, the proof of offer of employment must be established by an employer's written offer to the employee by registered mail. (Workers' Compensation Review Committee)

Senate Bill No. 2060 - Workers' Compensation Coverage of Chronic Opioid Therapy. This bill establishes protocols that must be followed as a prerequisite for Workforce Safety and Insurance to cover chronic opioid therapy for injured employees. To qualify for coverage, the chronic opioid therapy must be appropriate and meet specified requirements; the status of the injured employee must meet specified requirements, such as have a diagnosis consistent with chronic pain; and the prescriber of the chronic opioid therapy shall meet specified requirements, such as complying with documentation requirements and entering treatment agreements with the injured employee. (Workers' Compensation Review Committee)

Senate Concurrent Resolution No. 4001 - Political Subdivision Financial Reports Study. Provides for a Legislative Management study to examine the necessity of the financial reports provided by political subdivisions. (Advisory Commission on Intergovernmental Relations)

Senate Concurrent Resolution No. 4002 - Political Subdivisions Statutory References Study. Provides for a Legislative Management study to examine the various references to political subdivisions currently in law. (Advisory Commission on Intergovernmental Relations)

Senate Concurrent Resolution No. 4003 - Additional Uses of Foundation Aid Stabilization Fund. This concurrent resolution amends Article X, Section 24, of the Constitution of North Dakota to permit the Legislative Assembly to appropriate or transfer any principal balance in the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium for the purpose of making low-interest loans for school construction projects, addressing existing or anticipated unfunded benefit obligations of state retirement funds; or other education-related purposes. (Government Finance Committee)

Senate Concurrent Resolution No. 4004 - Dental Services Study. This resolution directs the Legislative Management to continue to study dental services in the state, including the effectiveness of case management services and the state infrastructure necessary to cost effectively use mid-level providers to improve access to services and address dental service provider shortages in underserved areas of the state. (Health Services Committee)

Senate Concurrent Resolution No. 4005 - Behavioral Health Judicial Issues. This bill provides for a Legislative Management study of judicial issues related to behavioral health, including 24-hour hold, termination of parental rights, and court committals, during the` 2015-16 interim. (Human Services Committee)