REPORT

OF THE

NORTH DAKOTA LEGISLATIVE MANAGEMENT

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

SIXTY-SIXTH LEGISLATIVE ASSEMBLY
2019

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January 3, 2019

Honorable Doug Burgum
Governor of North Dakota

Members, 66th Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Management's report and recommendations of 25 interim committees.

Major recommendations include encouraging the State Board of Higher Education to consider implementing a direct admissions program; continuing the higher education challenge matching grant program; extending the expiration date of the statute that establishes a minimum amount payable to an institution through the higher education funding formula through June 30, 2021; proposing a Legislative Management study of distributed ledger technology and blockchain for state government; proposing general fund appropriations to the Department of Human Services for behavioral health prevention and early intervention services, for implementation of a community behavioral health program to provide services to individuals outside the correctional system who have serious behavioral health conditions, for targeted case management services, for implementation of recommendations of the Human Services Research Institute's study of the state's behavioral health system and for a voucher system for mental health services; providing Public Employees Retirement System self-insurance health plans are subject to regulation by the Insurance Department; authorizing the Industrial Commission to require an exploration permit from the Industrial Commission before exploring for a high-level radioactive waste facility and a facility permit before operating a high-level radioactive waste facility; creating a high-level radioactive waste advisory council to advise the Industrial Commission and the Legislative Assembly; requiring the Superintendent of Public Instruction to facilitate a meeting of stakeholders regarding the statewide vision on education and requiring a collaborative report regarding the strategic vision; and creating a skilled workforce scholarship program and a 21st century manufacturing workforce incentive.

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
North Dakota Legislative Management

RH/JJB

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 Legislative Research Committee 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 remains 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 service agency. These agencies vary in staff size and functional responsibilities. Legislative service agencies provide legislators with the tools and resources essential to fulfill the demands placed upon them. Prior to the creation of a legislative service agency, the Legislative Assembly 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. The Majority Leader and the Minority Leader in each house appoints members in proportion to the number of members in each party in each house. The minority party in each house is entitled to at least two members on the Legislative Management.

The Legislative Management 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, Energy Development and Transmission Committee, Information Technology Committee, Legislative Audit and Fiscal Review Committee, Tribal and State Relations Committee, Water Topics Overview Committee, and Workers' Compensation 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 sometimes are selected to serve when it is determined the citizen members can provide special expertise or insight for a study, or if directed by the statute or bill.

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 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 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, bill drafting capabilities, and video recording of floor sessions. 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 also has 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 also were subjects of studies.

The review and updating of uniform and model acts, such as the Uniform Probate Code and the Uniform Commercial Code, also have 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 receive laptop computers 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. Improvements to LEGEND have been made in the interims since its implementation, including a web-based application. 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 legislators 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 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 2017 through October 2018, covering 4,047 pages of rules and 3,736 rules sections. Both the number of sections reviewed and the number of pages of rules were substantially higher than the comparable amount from the previous biennial period, primarily due to extensive rules adopted to implement the newly created Department of Environmental Quality. The Legislative Management voided a rule adopted by the North Dakota Board of Medicine relating to telemedicine. The Legislative Management agreed on rules amendments of the Attorney General, Department of Corrections and Rehabilitation, Department of Environmental Quality, Game and Fish Department, State Department of Health, Department of Human Services, Industrial Commission, Insurance Commissioner, Office of Management and Budget, Superintendent of Public Instruction, Public Service Commission, Racing Commission, State Water Commission, and Workforce Safety and Insurance, as well as numerous boards and commissions.

The Legislative Management also studied the membership and state supervision of the state's occupational and professional licensing boards in order to retain antitrust law immunity.

AGRICULTURE

The Legislative Management studied the practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein.

The Legislative Management studied the nutrient management plans developed by the State Department of Health.

The Legislative Management studied the State Soil Conservation Committee, including a review of the duties, responsibilities, and related costs and efficiencies of the committee and related North Dakota State University Extension Service staff, the needs of the soil conservation districts, and the necessity to continue the State Soil Conservation Committee.

The Legislative Management studied the desirability and feasibility of creating a state wetlands bank, including consultation with stakeholders to examine land parcels under the control and management of the state, which are suitable for wetlands mitigation. The Legislative Management recommends House Bill No. 1026 to require ongoing training for soil conservation district supervisors.

The Legislative Management received reports regarding the status of the activities of the Advisory Committee on Sustainable Agriculture; and the annual evaluation of research activities and expenditures of the State Board of Agricultural Research and Education.

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, tobacco settlement proceeds, federal grant applications, and the voluntary separation incentive program.

The Legislative Management authorized the expenditure of additional other funds for a dome seat replacement project at Minot State University and a track repair project at Valley City State University. The Legislative Management received reports from the North Dakota University System regarding local funds and from Valley City State University regarding the status of the integrated carbon plant project.

The Legislative Management received reports from the State Board of Agricultural Research and Education on the status of its activities and the North Dakota Agricultural Experiment Station and the North Dakota State University Extension Service budgets; the Department of Agriculture on the emergency hay transportation assistance program; the Department of Commerce on the Centers of Excellence and Centers of Research Excellence audit and monitoring reports, renaissance fund organizations annual audits, and the department's May 2018 reduction-in-force; the Department of Human Services on transfers in excess of $50,000; the Attorney General's office regarding litigation-related expenses from the Industrial Commission's litigation fund; the Housing Finance Agency regarding housing units owned or master leased for essential service workers; the Tax Commissioner regarding property tax annual increases; and the Information Technology Department regarding the status of the statewide interoperable radio network, cloud computing, shared services unification, and cybersecurity.

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 regarding its activities; the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than 3 years; 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 regarding its activities; the State Fire Marshal regarding expenditures by certified fire departments and district of funds received from the insurance tax distribution fund, and reserve fund balances; the Information Technology Department, Department of Transportation, Secretary of State, Parks and Recreation Department, and the Bank of North Dakota regarding the electronic payment processing system; the Standing Rock Sioux Tribe regarding tax agreements entered with the state; and the Three Affiliated Tribes of the Fort Berthold Reservation regarding investment of oil and gas tax receipts.

The Legislative Management considered the form of the State Water Commission budget and the effect of the Supreme Court decision in *North Dakota Legislative Assembly v. Burgum* on the duties of the Budget Section.

The Legislative Management approved 11 of 12 agency requests for increased spending authority, transfers of spending authority, and expenditures from the state disaster relief fund, which were forwarded from the Emergency Commission.

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 2019-21 interim.

EDUCATION FUNDING

The Legislative Management studied how state aid for elementary and secondary education is determined and distributed under the state aid funding formula; the impact of state aid provided through the funding formula; the portion of the elementary and secondary education funding formula which relates to the utilization of in lieu of property tax funds; and potential changes to the funding formula to ensure equity, adequacy, and sustainability. The Legislative Management also examined the delivery and administration of elementary and secondary education in the state and the short- and long-term policy and statutory changes that may result from or be necessitated by 21st century technological advances and global economics. The combined studies included a review of current state school aid funding levels and the status of state school aid, including the cost to continue state school aid in the 2019-21 biennium and the estimated cost of integrated formula per pupil payment rate increases; school district hold harmless calculations, including minimum and maximum adjustments; school district mill levy limitations; in lieu of property tax revenue and other local revenue deductions; rapid enrollment grants and the challenges and cost of transitioning to on-time funding based on fall enrollment; cross-border tuition and the education of students living in border states; adult learning center funding; and property tax relief and the integration of property tax relief into the state school aid formula. The Legislative Management makes no recommendation related to its study of the state school aid funding formula.

The Legislative Management received reports from the Superintendent of Public Instruction regarding:

- The financial condition of schools, including information regarding mill levy rates, taxable valuation, revenues, expenditures, student enrollment, average daily membership, average cost per pupil, teachers, average salaries, and number of graduates;
- School district employee compensation reported by school districts for school years ending in June of 2015, 2016, and 2017; and
- The use of teacher loan forgiveness funds appropriated to the University System for the teacher shortage loan forgiveness program during the 2017-19 biennium.

The Legislative Management also received reports from the Department of Human Services regarding policy changes allowing expanded reimbursement for Medicaid-covered services provided by school districts and other reports from the Governor's office; Indian Affairs Commission, Tax Department, Education Commission of the States, and other education stakeholders.

EDUCATION POLICY

The Legislative Management studied the feasibility and desirability of combining services for any and all English language learner programs, distance learning programs, regional education associations, teacher center networks, adult learning centers, career and technical education programs, education technology services, continuing education for counselors, educational leadership, and the teacher mentor program.

The Legislative Management studied entities that deliver K-12 professional development services, distance curriculum, support for schools in achieving school improvement goals, assistance with analysis and interpretation of

student achievement data, and technology support services. The study directive required a focus on the funding, governance, nature, scope, and quality of services provided to schools. The study directive also required a focus on the duplication of services across entities and the accountability for expenditures. The study directive required identification of efficiencies and the feasibility and desirability of consolidating services. Due to similarities in the nature and scope of the two assigned studies, the Legislative Management elected to combine the studies into one comprehensive study.

The Legislative Management recommends House Bill No. 1027 relating to technical corrections regarding the Every Student Succeeds Act.

The Legislative Management recommends Senate Bill No. 2025 to require the Superintendent of Public Instruction to facilitate a meeting of stakeholders regarding the statewide vision on education, and to require a collaborative report regarding the strategic vision.

The Legislative Management received reports from the Education Standards and Practices Board regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board; and from the Superintendent of Public Instruction regarding requests from a school or school district for a waiver of any rule governing the accreditation of schools; waivers applications under North Dakota Century Code Section 15.1-06-08.1; the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules, and a review of evaluation date results; and 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.

EMPLOYEE BENEFITS PROGRAMS

The Legislative Management solicited and reviewed multiple proposals affecting retirement and health programs for public employees and obtained actuarial and fiscal information on each of these proposals. The Legislative Management received and reviewed the annual actuarial reports for the Teachers' Fund for Retirement and the Public Employees Retirement System. 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 maintain 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 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 pursuant to its statutory responsibility. The Legislative Management also studied the oil and gas tax revenue allocations to hub cities, the taxation of wind energy, and the refracturing of existing oil wells. The Legislative Management received reports regarding the Energy Policy Commission's policy recommendations, the North Dakota Transmission Authority's activities, the North Dakota Pipeline Authority's activities, the carbon dioxide capture tax credit, brine pond remediation, oil and gas valuation, fracturing sand, rare earth elements, and biological remediation methods for oil spills. The Legislative Management recommends continuing the concept of hub cities in the oil and gas tax allocation formulas and recommends changing the allocation of wind generation tax collections to distribute a portion of the revenue collections to the state.

GOVERNMENT FINANCE

The Legislative Management studied:

- The volatility of state revenue sources.
- The delivery and cost of the Department of Transportation's State Fleet Services for state agencies.
- The funding mechanisms and options available to the Department of Transportation, political subdivisions, and public transportation providers, for road construction, maintenance, other transportation infrastructure needs, and transit services.

The Legislative Management reviewed state budget information, including monitoring the status of revenues and appropriations, and reviewing the 2017-19 biennium revised and preliminary 2019-21 biennium revenue forecasts.

The Legislative Management received the following reports:

- From the Department of Transportation regarding information collected from transportation network companies.
- From the Department of Transportation regarding the results of the study on the manner in which the Department of Transportation provides snow and ice control services on the state highway system.

- Report from the Department of Transportation on the study of options to consolidate transportation facilities within Williams County and the Williston district headquarters.
- From the Department of Transportation and the Information Technology Department of the results of the study on benefits of allowing wireless telecommunication infrastructure within state highway rights of way and what, if any, requirements of allowing the installation may be in the public interest.
- From 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, Adjutant General, and private parties appointed by the Governor.
- From the Industrial Commission regarding the results and recommendations of the gain-sharing program study of the Mill and Elevator.

GOVERNMENT ADMINISTRATION

The Legislative Management studied:

- 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;
- The duties of the North Dakota Firefighter's Association;
- Office space cost and value of properties owned by Job Service North Dakota; and
- The state's emergency medical service system.

The Legislative Management also studied the purpose and content of statements of interests. The Legislative Management recommends the 2019 Legislative Assembly favorably consider legislation that may be introduced to repeal Chapter 16.1-09 relating to statements of interests, and to include relevant provisions from Chapter 16.1-09 in Chapter 16.1-08.1, relating to campaign contribution statements.

The Legislative Management also studied moving local elections to the general election in November of even-numbered years. The Legislative Management recommends no statutory changes be made to the timing of local elections.

The Legislative Management received a report from the Governor regarding a study of the operations of the Department of Financial Institutions and the Securities Department to determine the feasibility and desirability of combining the agencies into a single department. The Legislative Management concurs with the recommendation of the Governor that the Department of Financial Institutions and the Securities Department not be combined.

HEALTH CARE REFORM REVIEW

The Legislative Management monitored and reviewed proposed federal changes to the federal Affordable Care Act; studied the public employee health insurance plan, including the feasibility and desirability of transitioning to a self-insurance plan; and studied options to operate the state medical assistance program and other related programs, as managed care.

The Legislative Management recommends House Bill No. 1028 to provide Public Employees Retirement System self-insurance health plans are subject to regulation by the Insurance Department and establish the parameters of this regulation; revise the requirements of these self-insurance health plans, including to allow for these plans when it is in the best interest of the state and its eligible employees and make stop-loss coverage optional; and authorize the Bank of North Dakota to extend the Public Employees Retirement System a line of credit to help administer a self-insurance health plan. The bill also revises the contract renewal requirements for uniform group insurance health benefits, providing the Public Employees Retirement System may not renew the contract unless doing so best serves the interests of the state and the state's eligible employees.

HEALTH SERVICES

The Legislative Management studied state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs. The Legislative Management recommends Senate Bill No. 2026 to appropriate $1,050,000 from the general fund and authorize 1.5 full-time equivalent (FTE) positions to the Department of Human Services for establishing and administering a voucher system to address underserved areas and gaps in the state's unified mental health delivery system and to assist in the payment of mental health services provided by mental health providers.

The Legislative Management studied the state's early intervention system for children from birth to age 3 with developmental disabilities.

The Legislative Management received a report from the State Department of Health regarding the comprehensive stroke system. The Legislative Management recommends Senate Bill No. 2027 to amend the definition of brain injury.

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 contract with NovaRest, Inc., to conduct cost-benefit analyses during the 2019 legislative session.

The Legislative Management also received reports from the State Fire Marshal regarding ignition propensity standards for cigarettes; State Department of Health, Department of Human Services, Indian Affairs Commission, and Public Employees Retirement System regarding its collaboration on diabetes-related programs; Department of Human Services regarding a children's prevention and early intervention behavioral health services pilot project; State Department of Health regarding a tobacco prevention and control plan; North Dakota Board of Social Work Examiners, Board of Addiction Counseling Examiners, Board of Counseling Examiners, North Dakota Marriage and Family Therapy Licensure Board, and State Board of Psychologist Examiners regarding behavioral health professional boards; and from the task force on children's behavioral health regarding its efforts and recommendations.

HIGHER EDUCATION

The Legislative Management studied the relationship between the University of North Dakota and the Energy and Environmental Research Center. The Legislative Management also studied higher education finances and the overall financial stability of institutions under the control of the State Board of Higher Education. The Legislative Management recommends:

- The State Board of Higher Education consider implementation of a direct admissions program.
- The State Board of Higher Education consider conducting a study to determine whether student achievement measure (SAM) retention and completion data is more appropriate for University System institutions than integrated postsecondary education data system (IPEDS) data.
- The State Board of Higher Education consider reviewing distance education programs provided by University System institutions from a systemwide perspective.
- House Bill No. 1029 to create a higher education funding formula review committee to study the funding formula during the 2019-20 interim.
- House Bill No. 1030 to extend the expiration date of Section 15-18.2-06 through June 30, 2021. The section establishes a minimum amount payable to an institution through the higher education funding formula.
- House Bill No. 1031 to increase the maximum grant award and funding available for the student financial assistance grant program.
- The 2019 Legislative Assembly continue the higher education challenge matching grant program.
- The 2019 Legislative Assembly continue the requirement for $2 of matching funds from operations or other sources for each $1 of extraordinary repairs funding used for a project.

The Legislative Management received reports from the University of North Dakota School of Medicine and Health Sciences regarding the strategic plan, programs, and facilities of the School of Medicine and Health Sciences and from the University System regarding grants to tribally controlled community colleges under Chapter 15-70. The Legislative Management also received reports from the State Board of Higher Education regarding North Dakota academic and career and technical education scholarships; the transfer of appropriation authority from the operations to the capital assets line item by institutions under the control of the board; the status of efforts to collaborate with Minnesota entities for research network purposes; employee position reductions; and the status of inconsistencies in employee classifications and human resources reporting, employee leave policies, practices for awarding tuition waivers, and practices for the charging of student fees.

HUMAN SERVICES

The Legislative Management studied the delivery of public human services. The Legislative Management recommends:

- Senate Bill No. 2028 to provide a $600,000 general fund appropriation to the Department of Human Services for behavioral health prevention and early intervention services, of which the department must allocate $300,000 for

substance abuse prevention and early intervention services and the remaining $300,000 for other mental health prevention and early intervention efforts.

- Senate Bill No. 2029 to direct the Department of Human Services to implement a community behavioral health program to provide services to individuals outside the correctional system who have serious behavioral health conditions. The bill provides a $7 million appropriation to the department for the program, of which $5.25 million is from the general fund and $1.75 million is from other funds. The bill also authorizes 6 FTE positions for the program.
- Senate Bill No. 2030 to appropriate of $408,000 from the general fund to the Department of Human Services to coordinate the implementation of recommendations of the Human Services Research Institute's study of the state's behavioral health system. The bill also authorizes 1.5 FTE positions to coordinate the implementation of recommendations.
- Senate Bill No. 2031 to provide an appropriation to the Department of Human Services for targeted case management. The bill appropriates $12,196,834 from the general fund and $12,196,834 from other funds and authorizes 1 FTE position.
- Senate Bill No. 2032 to implement a peer support services certification program within the Department of Human Services. The bill appropriates $275,000 from the general fund and $275,000 from other funds, and authorizes 1 FTE position for the program.

The Legislative Management studied the operations and management of the Tompkins Rehabilitation and Corrections Center.

The Legislative Management studied the refugee resettlement process in the state.

The Legislative Management received reports regarding the Autism Spectrum Disorder Task Force, autism spectrum disorder voucher program pilot project, children's health insurance program, Medicaid Expansion provider reimbursement rates, home- and community-based services, options to establish a Medicaid fraud control unit, and developmental disability waivers. The Legislative Management recommends:

- House Bill No. 1032 to require the Department of Human Services to establish and revise a sliding fee schedule biennially for the Service Payments for Elderly and Disabled (SPED) program.
- House Bill No. 1033 to direct the Department of Human Services to create a pilot program for independent home- and community-based services case managers for the SPED and expanded SPED programs.
- House Bill No. 1034 to require the Department of Human Services to establish guidelines for long-term care services providers to deliver home- and community-based services.

INITIATED AND REFERRED MEASURES

The Legislative Management studied the initiated and referred measure laws, procedures, and costs in North Dakota and other states; whether the Constitution of North Dakota or state laws should be amended; and the impact of out-of-state funding on the initiated and referred measure process in North Dakota. The Legislative Management focused its deliberations on drafting assistance for initiated measure sponsoring committees, public officials' approvals of petition titles and ballot language, fiscal impacts of initiated and referred measures, managing the number of measures placed on ballots, qualifications for petition circulators, thresholds for putting initiated measures on ballots, processes to verify petition signatures, and out-of-state funding of committees supporting ballot measures. The Legislative Management recommends the following four bills:

- House Bill No. 1035 to require each measure on the ballot to be accompanied by its fiscal impact;
- House Bill No. 1036 to require the Legislative Council to coordinate the determination of estimated fiscal impacts for referred measures;
- House Bill No. 1037 to require contributions to committees supporting or opposing ballot measures from residents to be reported with the same level of detail as contributions from nonresidents; and
- Senate Bill No. 2033 to allow the Legislative Council to provide drafting assistance to sponsoring committees of initiated measures pursuant to Legislative Management guidelines.

INFORMATION TECHNOLOGY

The Legislative Management received reports from the Chief Information Officer and representatives of the Information Technology Department regarding cloud computing, shared services unification, cybersecurity, the department's business plan and annual report, large information technology projects, prioritization of computer software

projects for the 2019-21 biennium, elementary and secondary information technology initiatives, the statewide longitudinal data system initiative, the statewide interoperable radio network project, the status of the electronic payment processing system, and health information technology initiatives.

The Legislative Management also received reports from representatives of the University System regarding higher education information technology projects and services.

The Legislative Management conducted a study of Information Technology Department services and rates pursuant to Section 8 of Senate Bill No. 2001 (2017). The Legislative Management received information from the Information Technology Department and 54 state agencies receiving services from the Information Technology Department. Because rates charged and services provided by the Information Technology Department may change due to recent department initiatives relating to cloud computing and shared services unification of information technology employees, the Legislative Management recommends the Legislative Assembly continue to monitor Information Technology Department services and rates and the impact on state agencies.

The Legislative Management received information from the Information Technology Department and IBM Corporation regarding distributed ledger technology and blockchain. The Legislative Management recommends House Concurrent Resolution No. 3002 to provide for a Legislative Management study of distributed ledger technology and blockchain for state government. The study is to include the potential benefits of distributed ledger technology and blockchain for state government, including an evaluation of the effects on government accounting and budgeting, decisionmaking, information technology authentication, records management, remote electronic voting, and other e-government services and applications, such as tax collection, land registry, distribution of benefits, digital currencies, and other potential benefits.

JUDICIARY

The Legislative Management studied the adoptive process and procedure, expenses, duration, and state tax credits and deductions associated with adoption by an identified or unidentified adoptive parent. The Legislative Management recommends House Bill No. 1038 to remove a requirement for a statement of affidavit confirming the information in the child-placing agency report is accurate.

The Legislative Management studied the provisions of Century Code which relate to firearms and weapons, for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent in their intent and direction, and rearranging provisions in a logical order. The Legislative Management recommends Senate Bill No. 2034 to make technical corrections to Title 62.1 and removes inconsistencies.

The Legislative Management studied the impact of Marsy's Law on the statutorily provided rights of crime victims and those alleged to have committed crimes, and the criminal procedures relating to the rights of victims and criminal defendants.

The Legislative Management studied the various legal notice and publishing requirements of all state agencies and political subdivisions, the related costs required in state and political subdivision budgets, and potential notification alternatives. The Legislative Management recommends Senate Bill No. 2035 to revise the top five notice requirements and shifts the notice requirements from the county extension agent to the commodity group holding an election.

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

The Legislative Management recommends Senate Bill No. 2036 to make technical corrections throughout Century Code.

The Legislative Management received a report from the Director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices; a biennial report from the North Dakota Racing Commission addressing the issue of the liability of charitable organizations that receive and disburse money handled through account wagering; a report from the North Dakota Lottery regarding the operation of the lottery; a report from the Department of Human Services on services provided by the Department of Corrections and Rehabilitation for individuals at the State Hospital who have been committed to the care and custody of the Executive Director of Department of Human Services; a report from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program, a report from the Task Force on the Prevention of Sexual Abuse of Children with recommendations for state policy that would prevent child sex abuse; a report from the State Department of Health, including the findings and recommendations of the study on adding identified medical conditions to the definition of "debilitating medical condition" in its annual reports; and an annual report from the State Department of Health on the number of applications, registered qualifying patients, registered designated

caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers; and expenses incurred and revenues generated by the department.

JUSTICE REINVESTMENT

The Legislative Management studied the juvenile justice process, the appropriate age when a juvenile is considered capable of committing a criminal offense, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process. The Legislative Management recommends House Bill No. 1039 to raise the age of culpability of a juvenile from 7 to 10 years old.

The Legislative Management studied the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from the Department of Corrections and Rehabilitation to the Attorney General.

The Legislative Management studied alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system.

The Legislative Management received a report from the Department of Corrections and Rehabilitation and the Supreme Court regarding the progress of the justice reinvestment initiative and from the Justice Reinvestment Oversight Committee on the findings and recommendations of the study of the implementation of justice reinvestment policies in the state and any legislation required to implement those recommendations.

LEGISLATIVE AUDIT AND FISCAL REVIEW

The Legislative Management received and accepted 170 audit reports from the State Auditor's office and public accounting firms. Among the audit reports accepted was one performance audit from the 2017 regular legislative session--State Board of Higher Education space utilization study; and 19 performance audits and evaluations from the 2017-18 interim, including University System institutions, purchasing card program; North Dakota State University, Parking and Transportation Services Department; University of North Dakota, continuity of operations planning; University Systems institutions, emergency preparedness at Dickinson State University, Mayville State University, Minot State University, Valley City State University, Bismarck State College, North Dakota State College of Science, North Dakota State University, and Williston State College; Governor's office travel and use of state resources; Administrative Committee on Veterans' Affairs oversight committee; Veterans' Home; and Department of Veterans' Affairs.

The Legislative Management received information regarding two information technology audits--University System's technology security audit and vulnerability assessment and Information Technology Department service organization.

The Legislative Management received information regarding the Department of Human Services' accounts receivable writeoffs and the examination report of the Bank of North Dakota from the Department of Financial Institutions.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Legislative Management approved arrangements for the 2019 legislative session. The Legislative Management approved installation of security cameras in the legislative chambers and encouraged the Highway Patrol and the Office of Management and Budget to improve access to the capitol for visitors.

The Legislative Management approved the *North Dakota Legislative Assembly Policy Against Workplace Harassment* and approved a checklist for investigating workplace harassment claims and an amendment of Joint Rule 901 to implement the policy and checklist.

The Legislative Management recommended adjustments in legislative compensation for the 2019-21 biennium.

The Legislative Management approved state participation in Phase 2 of the 2020 Census Redistricting Data Program.

LEGISLATIVE REVENUE ADVISORY

The Legislative Management studied state revenues and state revenue forecasts and reviewed information regarding the revenue forecasting process and recent revenue forecast adjustments. The Legislative Management received a report from IHS Markit regarding economic forecasting data, including a 2017-19 biennium revised general fund revenue forecast and a 2017-19 biennium preliminary general fund revenue forecast. The Legislative Management also received information from state agencies and industry representatives regarding current economic conditions in the state.

NATURAL RESOURCES

The Legislative Management studied the impact of wind energy development on the environment, including consideration of the impact of wind energy development on property values, agriculture, aesthetic impacts, and the advantages and disadvantages of implementing legislation for pooling or unitization of wind resources similar to that of the oil and gas industry in Chapter 38-08 and the necessary processes for the decommissioning of a wind energy project.

The Legislative Management studied, in consultation with the Geological Division of the Department of Mineral Resources and the Environmental Health Section of the State Department of Health, whether state and local level regulation of high-level radioactive waste disposal is consistent with applicable federal regulations; how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits; the mechanisms for calling a special session to approve the depositing of high-level radioactive waste material in the state and the notice of disapproval requirements under federal law; special laws, local laws, and existing code regarding the potential existence of a legislative veto over executive branch authority to determine the size, scope, and location of high-level radioactive waste material deposits in the state and any existing conflicts with the Commerce Clause; and the feasibility and desirability of developing new statutes and regulations for subsurface disposal of waste and the storage and retrieval of material.

The Legislative Management recommends Senate Bill No. 2037 to repeal Chapter 23-20.2; create two new chapters of Century Code, one for high-level radioactive waste disposal and one for subsurface storage and retrieval of nonhydrocarbons; designate the Industrial Commission as the point of contact with the Department of Energy and other federal agencies; authorize the Industrial Commission to regulate drilling, excavating, construction, operation, and onsite inspections; require an exploration permit from the Industrial Commission before exploring for a high-level radioactive waste facility and a facility permit before operating a high-level radioactive waste facility, and create a high-level radioactive waste advisory council to advise the Industrial Commission and the Legislative Assembly.

The Legislative Management studied the cooperation and communication between the Public Service Commission and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and public hearing process, including an examination of the impacts on relationships between landowners and the oil and gas industry, impacts on the efficiency of the siting process, impacts on the public input process, and impacts on compliance with, and enforcement of, political subdivision zoning ordinances. The Legislative Management recommends Senate Bill No. 2038 to correct the codification issues caused by the conflict between House Bill No. 1144 (2017) and Senate Bill No. 2286 (2017) by incorporating the sections addressing gas or liquid transmission facilities incorrectly placed in Chapter 49-22 into Chapter 49-22.1, which governs gas or liquid facility siting.

The Legislative Management accepted a report from the Energy and Environmental Research Center regarding the results and recommendations of the pipeline leak detection study.

TAXATION

The Legislative Management studied economic development tax incentives and received three reports from the Department of Commerce, including a report regarding renaissance zone progress, a report pertaining to cities that have renaissance zone property included in a tax increment financing district, and a report compiling and summarizing annual state grantor reports and reports of state agencies that awarded business incentives for the previous calendar year. The Legislative Management recommends Senate Bill No. 2039 to create a skilled workforce scholarship program that provides grants to students enrolled in educational programs that relate to workforce areas in high demand; House Bill No. 1040 to create a 21st century manufacturing workforce incentive that provides an income tax credit equal to a portion of the amount expended to automate a manufacturing process; and House Bill No. 1041 to increase the amount of the homestead tax credit for special assessments and tie the interest rate applied to the credit to a moving index.

The Legislative Management studied the property tax system, including a review of property classifications and taxing districts, historical fluctuations in property values, the transparency of the property tax system, the processes and procedures available to taxpayers to contest valuations and assessments, the manner in which property tax information is provided to taxpayers, the process of determining taxing district budgets, and taxpayer participation and input in the property tax system. The Legislative Management studied the duplicative application of property tax incentives, including a review of the benefits received by properties located in both a tax increment financing district and a renaissance zone, the duration for which a single property may benefit from the use of multiple property tax incentives, and the impacts on the remainder of the property tax base that is not receiving property tax incentives. The Legislative Management also studied how city growth and infill development affects property taxes, including an evaluation of the return on investment for state and community projects, how various policies affect city development patterns, the cost of government services and infrastructure, the amount of tax revenue generated per increment of assumed liability for downtown areas, and the revenue and expenses generated by certain areas of a city. The Legislative Management recommends Senate Bill No. 2040 to exclude property owned by a political subdivision from consideration in protests against the formation of a

special improvement district and Senate Bill No. 2041 to allow park districts to issue bonds without an election but provide taxpayers with a formal protest period.

The Legislative Management studied the feasibility and desirability of providing an income tax credit to individuals for premiums paid for hybrid long-term care partnership plan insurance coverage.

The Legislative Management accepted a report from the Tax Commissioner compiling reports from counties and school districts receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended. The Legislative Management recommends Senate Bill No. 2042 to eliminate the report.

The Legislative Management accepted a report from the Department of Human Services on the status of the state-paid economic assistance and social service pilot program and the development of a plan for permanent implementation.

TRIBAL TAXATION ISSUES

The Legislative Management studied tribal taxation issues, including the tax collection agreements that exist between the tribes and the state, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, and the procedure for withdrawal from an agreement and how to handle disputed funds.

The Legislative Management also studied Indian education issues, including behavioral health concerns, K-12 funding, and tribal college workforce development grants; tribal health and human services issues, including health care funding shortages, Medicaid reimbursement, child welfare, housing, and unemployment; infrastructure and law enforcement issues, including infrastructure needs and law enforcement cooperation and licensure; and additional issues affecting the tribes, including voter identification requirements, the use of unmanned aircraft systems, and signage marking tribal lands.

WATER TOPICS OVERVIEW

The Legislative Management studied industrial water use of the oil and gas industry, and issues related to the state's development of a statewide flood hazard risk management framework for assessing, managing, and reducing property-specific flood risk. The Legislative Management received two final study reports from the Industrial Commission. One of the studies involved an assessment of whether the Western Area Water Supply Authority should sell or lease its industrial water supply assets, and the other considered whether and how the state should regulate sediment studies and dredging operations from reservoir beds. The Legislative Management also received a report from the Bank of North Dakota regarding the consolidation of the Western Area Water Supply Authority's loans.

The Legislative Management monitored the status of the Garrison Diversion Conservancy District and Red River Valley Water Supply Project, the Fargo Flood Control and FM Area Diversion Project, and the Souris River flood control project, and received reports and information on other flood control projects, water project funding and prioritization, regionalization of water supply projects, rural water supply issues, the Western Area Water Supply Authority, the Southwest Water Authority, the Northwest Area Water Supply project, the process and timing of State Water Commission approvals of water projects, the need to manage water resources on a basinwide basis, and other water-related topics. The Legislative Management held two joint meetings with the State Water Commission and discussed continued collaboration between the two entities.

WORKERS' COMPENSATION REVIEW

The Legislative Management fulfilled its statutory duties and reviewed the workers' compensation case of ten injured employees to determine whether changes should be made to the state's workers' compensation laws. The committee selected one element to be included in the quadrennial performance evaluation of Workforce Safety and Insurance. The committee received the performance evaluation report and reviewed the actions taken resulting from the performance evaluation report.

The committee received annual reports from Workforce Safety and Insurance regarding pilot programs to assess alternative methods of providing rehabilitation services and compiled data relating to safety grants issued under Chapter 65-03.

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:

- Administrative agencies are properly implementing legislative purpose and intent.
- There is dissatisfaction with administrative rules or statutes relating to administrative rules.
- 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 NDCC Section 28-32-07 to approve extensions of time for administrative agencies to adopt rules, and its responsibility under NDCC 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.

The Legislative Management assigned to the committee a study directed by House Concurrent Resolution No. 3026 (2017). The resolution provided for a study of the membership and state supervision of the state's occupational and professional licensing boards in order to retain antitrust law immunity.

Committee members were Representatives Bill Devlin (Chairman), Randy Boehning, Joshua A. Boschee, Kim Koppelman, Scott Louser, Brandy Pyle, Mary Schneider, Jay Seibel, Nathan Toman, and Robin Weisz and Senators Howard C. Anderson, Jr., Kelly M. Armstrong, Joan Heckaman, Ralph Kilzer, Jerry Klein, Scott Meyer, Nicole Poolman, and David S. Rust.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th 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 NDCC Chapter 28-32. This continues the rules review process initiated in 1979.

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

- Whether the rules resulted from statutory changes made by the Legislative Assembly.
- 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.
- 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.
- 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.

- 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.
- The subject matter of the rules and the reasons for adopting the rules.
- 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.
- 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.
- 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.
- 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.
- 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 appears before the committee.

CURRENT RULEMAKING STATISTICS

The committee reviewed 3,736 rules sections and 4,047 pages of rules changed from January 2017 through October 2018. Both the number of sections reviewed and the number of pages of rules were substantially higher than the comparable amount from the previous biennial period, primarily due to extensive rules adopted to implement the newly created Department of Environmental Quality. 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
January 2015-October 2016	2,108
January 2017-October 2018	3,736

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

Time Period	Supplement Pages
November 1992-October 1994	3,809
November 1994-October 1996	3,140
November 1996-October 1998	4,123
November 1998-November 2000	1,947
December 2000-November 2002	2,016
December 2002-November 2004	4,085
December 2004-October 2006	1,920
January 2007-October 2008	1,663
January 2009-October 2010	2,011
January 2011-October 2012	2,399
January 2013-October 2014	2,116
January 2015-October 2016	2,938
January 2017-October 2018	4,047

Rule Review Schedule

Since September 2005, NDAC supplements have been published on a calendar quarter basis. The 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 no 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:

- An absence of statutory authority;
- An emergency relating to public health, safety, or welfare;
- 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;
- A conflict with state law;
- Arbitrariness and capriciousness; or
- 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 3 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.

Obsolete Rules Repealed by Committee

The committee approved a request from the State Board of Nursing for the repeal of administrative rules regarding the 2004 RN and LPN Licensure Compact, which were superseded by the Nurse Licensure Compact. The Nurse Licensure Compact was passed by the Legislative Assembly in 2017 and implemented on January 19, 2018.

The committee approved a request from the Industrial Commission for the repeal of rules that provided for a workover certification to the Tax Commissioner. The rules became obsolete as a result of 2017 legislation that eliminated the extraction tax reduction for a workover well and the need for a workover certification.

Rules Carried Over or Amended by Committee Approval

The committee carried over consideration of rules of the Industrial Commission to address concerns regarding whether a bond is required for existing crude oil and produced water gathering pipelines, issues regarding the regulation of underground gas gathering pipelines, whether the rules required berms on existing well sites, and whether adopting rules regarding leakage detection was contrary to legislative intent. The committee and the Industrial Commission agreed on amendments offered by the Industrial Commission to address each of the issues.

The committee carried over for consideration a request of the Superintendent of Public Instruction to repeal rules providing for a school accreditation process. The committee and the Superintendent of Public Instruction agreed to replace the repealed rules by adding language adopting by reference the AdvancED Accreditation Policies and Procedures.

The committee carried over for consideration a rule of the State Board of Chiropractic Examiners prohibiting a chiropractor from offering free items or services to induce patients to receive care. After receiving further information and clarification from the board, the committee took no further action on the rule.

At the request of the Department of Human Services, due to a delay in the approval of a federal waiver, the committee carried over the consideration of rules relating to developmental disability ratesetting. Upon receiving a subsequent report from the department indicating the ratesetting rules did not comply with the requirements of the Centers for Medicare and Medicaid Services, the committee, at the request of the department, withdrew the rules from consideration.

The committee carried over for consideration a rule of the State Board of Pharmacy relating to a pharmacist consultation requirement for new prescriptions dispensed to a patient by mail. The committee and the Board of Pharmacy agreed to an amendment requiring the pharmacist to assess on a case-by-case basis whether telephone contact or written materials accompanying the prescription was the more appropriate option.

The committee carried over for consideration a rule of the Peace Officer Standards and Training Board regarding the requirements of confidential informant agreements. The committee and the Peace Officer Standards and Training Board agreed adding an in-person requirement to the process resolved the concerns of the committee and other interested parties.

Rules Voided by Committee

The committee voided rules adopted by the North Dakota Board of Medicine relating to telemedicine. The rules required the initial telemedicine consultation to be conducted via video, regardless of the nature of the consultation. In voiding the rule, the committee found the rules failed to comply with express legislative intent, were in conflict with state law, and were arbitrary and capricious.

STATE SUPERVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS

The Legislative Management assigned to the Administrative Rules Committee a study directed by House Concurrent Resolution No. 3026 (2017). The resolution provided for a study of the membership and state supervision of the state's occupational and professional licensing boards in order to retain antitrust law immunity. According to the testimony in support of this resolution, the request for the study is in response to the 2015 United States Supreme Court decision, *North Carolina Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015). In *North Carolina Dental*, the Supreme Court held when a controlling number of a state's occupational or professional licensing board members are market participants, the board must be "actively supervised" to be immune from antitrust law.

Background

Licensing boards are a creation of state law. The laws governing licensed occupations and professions often provide for regulation and oversight of the licensees through the appointment, often by the Governor, of members of the occupation or profession to licensing boards. The board is responsible for ensuring the licensees maintain high standards of professionalism and quality of care to safeguard public health and safety. Licensing boards adopt administrative rules,

discipline licensees, and respond to consumer complaints. Most licensing boards have the statutory authority to sanction licensees for unprofessional or unlawful conduct, by way of reprimand or suspension or revocation of a license.

When a majority of the members of any state licensing board are competitors of the individuals regulated by the board, board decisions and policies that restrain trade may raise antitrust issues. Licensing board members often are either unaware of the applicability of the antitrust laws to their board or are inadequately educated to recognize the type of actions that may expose the board to antitrust risk. Even if board members believe competition restraining policies are necessary to ensure high professional standards, quality services, or quality patient care, a court may find the policies do not justify the restraint of trade.

Antitrust Laws and the State Action Doctrine

Antitrust laws exist to ensure a competitive marketplace. The Sherman Antitrust Act of 1890 [15 U.S.C. §§ 1-7] is a federal law that attempts to maintain free and orderly markets by prohibiting monopolies and other efforts in restraint of trade. When businesses, commonly referred to by the courts as "market participants," engage in prohibited anticompetitive behavior, the businesses expose themselves to liability under federal antitrust law. The Sherman Act does not expressly distinguish state agencies from private parties when it comes to restraining trade; however, since 1943 certain forms of state action have been immune from the antitrust laws as the result of case law.

State-action immunity is a doctrine created by the United States Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943). This doctrine exempts from prosecution under the antitrust laws certain activities the state has decided to regulate rather than allow the marketplace to discipline itself. The rationale behind the *Parker* immunity is that in enacting the Sherman Act, Congress did not intend to restrain state behavior. The state action doctrine provides immunity to states, state actors, and private actors from liability for violations of federal antitrust laws if the actor's anticompetitive actions are actions of the state.

For the doctrine to apply, the United States Supreme Court has extended its state action doctrine of antitrust immunity to cover three sets of circumstances:

1. **State conduct.** Actions taken by the state's lawmakers or state supreme court, which result in anticompetitive effects, enjoy immunity from federal antitrust laws.
2. **Private parties acting under the active supervision of the state.** Under the two-prong test in *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), private parties may claim state-action immunity if the parties' actions are: (a) pursuant to a clearly articulated and affirmatively expressed state policy; and (b) actively supervised by the state.
3. **Municipalities acting pursuant to a clearly articulated state policy.** The United States Supreme Court has held municipalities need not show active state supervision as a prerequisite to securing the protections of the state action doctrine.

The case law in the area of antitrust laws and application of the state-action immunity doctrine, which has been evolving since 1943, led to the question raised in *North Carolina Board of Dental Examiners v. Federal Trade Commission*: If the state agency in question is a professional licensing board comprised of private industry members, must another state actor supervise the agency for it to be immune from the antitrust laws?

North Carolina Board of Dental Examiners v. Federal Trade Commission

The North Carolina Dental Practice Act (N.C. Gen. Stat. §§ 90-22 through 90-48.3) grants the North Carolina Board of Dental Examiners (board) broad authority to regulate the practice of dentistry. The board's primary function is to create, administer, and enforce a licensing system for practicing dentists. If the board suspects an individual of engaging in the unlicensed practice of dentistry, the board may bring an action to enjoin the individual from continuing the unlawful practice.

In the 1990s dentists in North Carolina began offering teeth whitening services. Around 2003 many nondentists entered the teeth whitening market, offering whitening services at considerably lower prices than dentists who offered the same service. Practicing dentists complained to the board about the nondentist providers offering whitening services. The board investigated the provision of teeth whitening services by nondentists and indicated its intent to stop the nondentist providers.

At the conclusion of the board's investigations, the board issued 47 cease and desist letters, on official board letterhead, to the nondentist teeth whitening providers. These letters requested the providers cease and desist "all activity constituting the practice of dentistry." The letters indicated providing teeth whitening products and services by nondentists is a misdemeanor under North Carolina law. The board also contacted the North Carolina Board of Cosmetic Art Examiners and requested that board warn cosmetologists to refrain from providing teeth whitening services. The

result of the board's efforts was to end the provision of teeth whitening services by nondentists and to cause manufacturers and distributors of teeth whitening products for nondentist providers to leave North Carolina or to decide not to do business in North Carolina.

On June 17, 2010, the Federal Trade Commission (FTC) issued an administrative complaint against the board for violating the Federal Trade Commission Act [15 U.S.C. § 45]. The board moved to dismiss the complaint, arguing as an agency of the state, the board's actions were that of the state itself and, consequently, the board was exempt from federal antitrust liability under the state action doctrine. An administrative law judge denied the board's motion to dismiss and FTC affirmed the administrative law judge's decision. Finding that the board's actions to exclude nondentist providers from the teeth whitening market were not actively supervised by the state, FTC declined to extend immunity to the board under the state action doctrine.

The board filed a federal declaratory action in the United States District Court for the Eastern District of North Carolina to enjoin the FTC's administrative proceeding. The district court dismissed the board's declaratory action, reasoning it lacked subject matter jurisdiction to render a judgment. After the federal district court dismissed the board's declaratory action, an administrative law judge held a trial on the merits. The administrative law judge found that the board violated the Federal Trade Commission Act through its anticompetitive actions to exclude nondentist practitioners from the teeth whitening market. On appeal, FTC affirmed the administrative law judge's findings on the same grounds.

The board appealed to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit, in *North Carolina Board of Dental Examiners v. Federal Trade Commission*, 717 F.3d 359 (4th Cir. 2013), upheld the FTC's conclusion that the board was a "private actor" because the board consisted primarily of market participants. According to the Fourth Circuit, to invoke state-action immunity as a private actor, the board could take anticompetitive actions to benefit its own membership; however, the board first must satisfy both the "clear articulation" and "active supervision" requirements of *Midcal*. The Fourth Circuit further concluded the board's anticompetitive actions did not have the sufficient supervision to meet the active state supervision prong of the *Midcal* test. The Fourth Circuit determined the board could not invoke state-action immunity protection from antitrust laws. The United States Supreme Court granted certiorari to decide whether, to invoke state-action immunity, the board's anticompetitive actions should be subject to the active supervision requirement.

On February 25, 2015, the United States Supreme Court affirmed the Fourth Circuit's decision in a 6-3 decision. The Supreme Court rejected the board's arguments and held "a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* active supervision requirement in order to invoke state-action antitrust immunity." The majority also found because a controlling number of the board's decisionmakers are active market participants in the occupation the board regulates, the board is treated as a private actor and must show active supervision by the state. The Court concluded the board did not meet the active supervision requirement.

The Court also reaffirmed the active supervision requirement is "flexible and context-dependent." The Court did not address what procedures would be sufficient to show active supervision. The Court, however, indicated the four basic requirements for active supervision are:

1. The review must be substantive, not merely procedural;
2. The supervisor must have the power to veto or modify the particular decisions;
3. The mere potential for review is not enough, it must actually occur; and
4. The supervisor may not be an active market participant.

North Dakota Professional and Occupational Licensing Boards

North Dakota law provides for the licensure of certain occupations and professions. The primary method of licensing individuals engaged in occupations and professions is by statutory licensing boards; however, some are licensed by state agencies.

Most statutes regulating occupational and professional licensing boards are contained in NDCC Title 43, and most of the occupations and professions licensed and regulated in Title 43 are health care and counseling related. Other professions licensed under Title 43 include abstractors, accountants, architects, social workers, trade professions (such as electricians and plumbers), and certain service industry workers (such as barbers and cosmetologists). Professions regulated by licensing boards contained in other titles include teachers (Title 15) and attorneys (Title 27).

The membership of the occupational and professional licensing boards varies from board to board. The Governor appoints most members of licensing boards in North Dakota. Requirements for board membership among the many regulated occupations and professions include criteria such as age, residency, education, licensure in that regulated profession or occupation, and membership in a particular professional organization.

TESTIMONY AND COMMITTEE CONSIDERATIONS

In its study of the membership and state supervision of the state's occupational and professional licensing boards in order to retain antitrust law immunity, the committee received testimony from the Attorney General's office and representatives of licensing boards. The committee also received information from the National Conference of State Legislatures.

Testimony from the Attorney General's office emphasized the primary question facing North Dakota as a result of *North Carolina Dental* is whether the state provides enough active state supervision to ensure the occupational and professional board members are protected by state action immunity. The Attorney General's office provided preliminary insights to the committee following the issuance of *North Carolina Dental* in 2015. However, because substantially more information has become available since 2015, the Attorney General's office noted it has refined its insights into the impact of the decision.

The testimony indicated an overwhelming majority of licensing board actions and decisions never involve, invoke, or violate federal antitrust laws. For example, the denial of a license to an applicant who fails to submit the materials required for licensure does not expose a licensing board to antitrust liability. Only "unreasonable" restraints on trade give rise to the antitrust liability. The Federal Trade Commission has issued guidance recognizing a licensing board that takes disciplinary action affecting a single licensee generally is not going to be "unreasonable." It was emphasized very few licensing board decisions ever raise antitrust issues.

According to the testimony, the initial reaction after *North Carolina Dental* was the belief that replacing a majority of licensing board members with public members would solve the issue. Additional FTC guidance has dissuaded states from this reaction for two reasons. First, the United States Supreme Court based its decision on the "controlling" number of licensing board members, not a majority. Thus, even one market participant on the board could be the "controlling" number if all public members look to the active market participant for advice that guides the board's decisions. Second, there are benefits of having market participants who bring expertise from the profession to the regulatory board.

The testimony indicated North Dakota has several layers of active state supervision in place to limit a licensing board's ability to carry out anticompetitive efforts:

1. State's attorneys provide active state supervision. With a few exceptions, licensing boards in North Dakota do not have the authority to prosecute nonlicensees for practicing without a license. Instead, licensing boards must rely on state's attorneys for prosecution. Only three North Dakota licensing boards have cease and desist authority.
2. The Legislative Assembly provides active state supervision. While licensing boards can propose legislation, the Legislative Assembly provides active state supervision when it passes laws. Furthermore, while licensing boards can engage in rulemaking, the Legislative Assembly similarly has oversight of the rulemaking process.
3. The Governor provides active state supervision. Executive Order 2015-05 allows boards to obtain "review and written approval from the Attorney General of all actions designed to enforce or implement regulatory policies when such enforcement or implementation actions may have an anticompetitive effect upon the professional market in question."
4. The Attorney General provides active state supervision in several ways, including:
    a. Issuing opinions related to a licensing board's scope of practice or other legal issues. These opinions direct the acts of government entities, until and unless a court determines otherwise. (NDCC § 54-12-01(19)).
    b. Directing assistant attorneys general to provide licensing boards with legal advice that cautions boards against taking any actions that may give rise to an antitrust claim. It was noted assistant attorneys general have attended numerous trainings regarding the *North Carolina Dental* case, and the Attorney General's office is developing training for all attorneys who advise regulatory boards so all are knowledgeable about the implications of the case.
    c. Overseeing any litigation a licensing board may seek to bring, and in doing so, refusing to initiate legal action that would result in unreasonable restraint on trade. (NDCC § 54-12-02)

The testimony from the Attorney General's office also provided options for additional layers of protection the Legislative Assembly may consider to ensure the appropriate level of state supervision exists. The testimony identified two categories of persons that could bring claims of anticompetitive conduct against a licensing board--licensees and nonlicensees.

Most licensing boards have statutory authority to take disciplinary action against a licensee. The licensee may agree to the discipline, such as by signing a settlement agreement. The board and the licensee also may opt to have the matter

heard before an administrative law judge (ALJ). The law provides at the conclusion of the administrative hearing, the ALJ issues findings of fact and conclusions of law which may include proposed discipline. Boards, however, can decline to follow the ALJ's proposed discipline. (NDCC § 28-32-39) The testimony of the Attorney General's office suggested the state could increase active state supervision through the ALJ if the law was amended to grant the ALJ the authority to decide what discipline is appropriate and to remove the board's authority to decline to follow that decision. It was noted the increased authority would have little, if any, fiscal effect, because the Office of Administrative Hearings is conducting hearings already on these matters and the change simply would give the ALJ more authority when arriving at a conclusion. It also was suggested a more drastic modification of the administrative procedure would be to require all licensing boards to go before the Office of Administrative Hearings to discipline a licensee, thus increasing active state supervision for all boards.

Anti-competitive claims against boards also may be raised by nonlicensees, as was the case in *North Carolina Dental*. As previously discussed, most, but not all, licensing boards in the state do not have jurisdiction over nonlicensees. If one of those licensing boards observes activity it considers the unlicensed practice in the profession, that licensing board refers the matter to the state's attorney, who in turn decides whether to pursue the matter. It was noted a statutory change is not required to retain that substantial level of active state supervision for those licensing boards. If, however, statutory changes were made to remove the jurisdiction of those several boards over nonlicensees, thus requiring all decisions related to nonlicensees be referred to a state's attorney, all licensing boards in the state effectively would be "actively supervised." It was suggested this option should be considered carefully as some boards, such as the State Board of Pharmacy, may want to retain authority over unlicensed practice to allow the board to act quickly on matters of public health and safety.

Testimony from a representative of the State Board of Pharmacy noted the board rarely issues cease and desist orders; however, it is an important tool for the board to have if there is a specific threat to public health. The testimony emphasized it was the Legislative Assembly that gave the board the authority to issue cease and desist orders.

Other testimony from representatives of licensing boards expressed concerns about some licensing boards that exceed statutory authority by advocating for the profession rather than regulating it. The testimony emphasized the advocacy role is best performed by the professional association representing the profession and not the regulatory board. The committee was encouraged to review the state's occupational and professional licensing laws in NDCC Title 43 to clarify the board's function is to regulate, not advocate. The testimony also citied violations of open meetings and open records laws and the administrative rule process as reasons why more active state supervision is necessary.

The committee received information from the National Conference of State Legislatures regarding state occupational licensing policies and trends. The information indicated states must find the balance between the autonomy of licensing boards to regulate their industry and state supervisory authority over licensing board decisions. The information indicated to comply with *North Carolina Dental*, some states have reorganized occupational licensing boards to have fewer current professionals as members or have established stricter oversight authority within a designated state agency. Other states have sought to create a legal cause of action for potential licensees to bring cases against licensing boards believed to be acting in an anticompetitive manner and against the public interest.

The committee also received information the United States Department of Labor, as part of the department's ongoing efforts to encourage occupational licensing reform, awarded a $450,000 grant to Job Service North Dakota to assist the state in reviewing and streamlining its occupational licensing rules.

Committee members agreed while there is little evidence of antitrust activities by occupational and professional licensing boards in North Dakota, the ruling in *North Carolina Dental* serves as a reminder to the state's boards not to take actions that might trigger antitrust concerns. It was suggested to prevent a situation similar to what happened in North Carolina, North Dakota may want to consider requiring the Attorney General to review all board-issued cease and desist orders. The consensus of the committee was major statutory and procedural changes as the result of *North Carolina Dental* are not necessary.

Conclusion

The committee makes no recommendations as a result of its study of the membership and state supervision of the state's occupational and professional licensing boards in order to retain antitrust law immunity.

TABLE A

Statistical Summary of Rulemaking
January 2017 Through October 2018 - Supplements 363 Through 370

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
3	368 - Apr 18	Accountancy, Board of	24	0	0	0	0	0	24
4	363 - Jan 17	Management and Budget, Office of	1	0	0	0	0	0	1
10	367 - Jan 18	Attorney General	9	4	0	4	0	0	17
	370 - Oct 18		17	0	0	0	0	0	17
11	368 - Apr 18	Audiology and Speech-Language Pathology, Board of Examiners on	5	1	0	0	0	0	6
17	363 - Jan 17	Chiropractic Examiners, Board of	7	2	0	0	0	0	9
	364 - Apr 17		1	0	0	0	0	0	1
20	365 - Jul 17	State Board of Dental Examiners	15	2	0	0	0	0	17
24	364 - Apr 17	State Electrical Board	0	0	0	22	0	0	22
24.1	364 - Apr 17	State Electrical Board	0	34	0	0	0	163	197
	367 - Jan 18		3	0	0	0	0	0	3
25	370 - Oct 18	State Board of Funeral Service	2	0	0	0	0	0	2
30	366 - Oct 17	Game and Fish Department	3	5	0	16	0	0	24
	367 - Jan 18		13	0	0	0	0	0	13
32	363 - Jan 17	Cosmetology, Board of	43	0	0	0	0	0	43
33	365 - Jul 17	State Department of Health	1	1	0	0	0	0	2
	367 - Jan 18		15	2	0	226	0	0	243
	368 - Apr 18		52	55	0	0	0	0	107
	370 - Oct 18		39	2	0	1	0	0	42
33.1	370 - Oct 18	Environmental Quality, Department of	0	1238	0	0	0	1054	2292
42	367 - Jan 18	Indian Scholarships, Board for	10	0	0	2	0	0	12
43	363 - Jan 17	Industrial Commission	5	1	0	0	0	0	6
	368 - Apr 18		25	1	0	4	0	0	30
45	364 - Apr 17	Insurance, Commissioner of	23	4	0	0	0	0	27
49	363 - Jan 17	Massage, Board of	14	0	0	2	0	0	16
	368 - Apr 18		5	0	0	0	0	0	5
50	367 - Jan 18	North Dakota Board of Medicine	1	2	0	0	0	0	3
	368 - Apr 18		0	1	0	0	0	0	1
55	363 - Jan 17	Nursing Home Administrators, Board of Examiners for	12	0	0	0	0	0	12
61	364 - Apr 17	State Board of Pharmacy	1	0	0	0	0	0	1
	365 - Jul 17		2	1	0	0	0	0	3
	366 - Oct 17		0	1	0	0	0	0	1
67	363 - Jan 17	Public Instruction, Superintendent of	1	1	0	32	0	0	34
	367 - Jan 18		6	15	0	21	0	0	42
67.1	368 - Apr 18	Education Standards and Practices Board	13	0	0	2	0	0	15
69	365 - Jul 17	Public Service Commission	11	0	0	0	0	0	11
	366 - Oct 17		6	0	0	0	0	0	6
69.5	363 - Jan 17	Racing Commission, North Dakota	2	0	0	0	0	0	2
	365 - Jul 17		0	1	0	0	0	0	1
	368 - Apr 18		7	0	0	0	0	0	7
	370 - Oct 18		2	0	0	0	0	0	2
75	363 - Jan 17	Department of Human Services	12	0	0	3	0	0	15
	367 - Jan 18		6	0	0	1	0	0	7
	368 - Apr 18		164	21	0	43	0	0	228
	370 - Oct 18		2	0	0	12	0	0	14
89	368 - Apr 18	State Water Commission	6	0	0	0	0	0	6
92	365 - Jul 17	Workforce Safety and Insurance	11	2	0	0	0	0	13
	367 - Jan 18		6	3	0	0	0	0	9
94	363 - Jan 17	Corrections and Rehabilitation, Department of	0	23	0	0	0	0	23
96	365 - Jul 17	Board of Clinical Laboratory Practice	9	0	0	0	0	0	9
101	367 - Jan 18	Real Estate Appraiser Qualifications and Ethics Board	0	18	0	0	0	0	18
109	370 - Oct 18	Peace Officer Standards and Training Board	1	1	0	0	0	0	2
111	367 - Jan 18	Marriage and Family Therapy Licensure Board	12	0	0	0	0	0	12
112	365 - Jul 17	Integrative Health Care	4	23	0	0	0	0	27
114	368 - Apr 18	Medical Imaging and Radiation Therapy Board	0	34	0	0	0	0	34
Total			630	1497	0	391	0	1216	3736

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned four studies.

- Section 20 of House Bill No. 1126 (2017) directed a study of the practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein.
- Section 3 of House Bill No. 1390 (2017) directed a study to review and monitor the nutrient management plan developed by the State Department of Health.
- Section 14 of Senate Bill No. 2020 (2017) directed a study of the State Soil Conservation Committee. The study directive required a review of the duties, responsibilities, and related costs and efficiencies of the committee and related North Dakota State University (NDSU) Extension Service staff, the needs of the soil conservation districts, and the necessity to continue the State Soil Conservation Committee.
- Section 1 of Senate Bill No. 2245 (2017) directed a study of the desirability and feasibility of creating a state wetlands bank. The study directive required consultation with stakeholders to examine land parcels under the control and management of the state, which are suitable for wetlands mitigation.

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

Committee members were Representatives Dennis Johnson (Chairman), Kathy Hogan, Michael Howe, Craig A. Johnson, Dwight Kiefert, Kathy Skroch and Senators Bill L. Bowman, Jim Dotzenrod, Joan Heckaman, Larry Luick, and Janne Myrdal.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

DON/VOMITOXIN, FALLING NUMBERS, AND PROTEIN

Section 20 of House Bill No. 1126 (2017) directed a study of the practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein.

The study was proposed to address the misunderstanding regarding the differences between the inspection of grain and the inspection of grain licensees, who governs the testing of grain, the standards for grain testing, and the practices and procedures dictating the resolution of disputes involving the testing of grain samples. Testimony in support of the study detailed the complexity and variability of testing equipment and how that may impact a grain testing sample. Concerns were expressed that the Federal Grain Inspection Service (FGIS) may not be training grain elevator operators adequately in the proper procedures for grain testing, which may result in variance within a sample among multiple elevators.

Background

According to the NDSU Extension Service, vomitoxin is a mycotoxin produced in wheat and barley grain infected by fusarium head blight or scab. Fusarium head blight may infect grain heads when wet weather occurs during the flowering and grain filling stages of plant development. Mycotoxins are toxic products of fungal metabolism, which occur in a wide variety of substances, including animal feed and human food. Mycotoxins can cause human health problems and economic losses in livestock due to feed refusal and poor weight gain. The United States Food and Drug Administration has established vomitoxin advisory levels to provide safe food and feed. Human food products are restricted to one part per million of vomitoxin in finished products.

Issues surrounding vomitoxin arose in the 1980s and 1990s, and the economic impact of vomitoxin on the production levels of grains has been substantial for the state. Vomitoxin affects everyone from the producers to the grain elevators to the end users. The world market sets certain health standards and part of the reason the standard for vomitoxin is so high is because that is what the world market demands. Fifty percent of North Dakota wheat is sold overseas.

Federal Guidelines

The United States Grain Standards Act was passed by Congress in 1916, and the standards for grains have been revised and amended multiple times since 1916. Under the Act, the Secretary of Agriculture of the United States has the

authority to investigate the weighing, handling, and grading of grain and to establish standards of kind, class, quality, and condition of grain. The secretary also may establish standards and procedures for accurate weighing of grains and safeguards over equipment calibration and maintenance for grain shipped in interstate or foreign commerce. The secretary may delegate responsibility for these duties to competent employees of an official agency or state agency. The administrator of the United States Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) has been delegated authority from the Secretary of Agriculture to administer the United States Grain Standards Act and to establish policies, guidelines, and regulations by which FGIS is to carry out the Grain Standards Act.

The Federal Grain Inspection Service is authorized to test wheat for protein, and governs and approves the equipment for bond tests, protein tests, moisture tests, and weighing for any grain being shipped out of state. Any dispute involving an official grain grade is resolved by the federal inspection process through a laboratory in Kansas City, Missouri, and grain grading is conducted by an official grain inspection agency appointed by FGIS. The United States Department of Agriculture does not require domestic or export shipments to be tested for vomitoxin, but GIPSA provides voluntary vomitoxin testing services locally at various field locations.

North Dakota Laws

Under North Dakota Century Code Section 60-02-03, the Public Service Commission has the authority to oversee the public warehouses of the state, including the handling, weighing, and storing of grain. A public warehouse includes any elevator, mill, warehouse, or grain warehouse. Under Section 60-02-04, the Public Service Commission may employ a federal licensed inspector to carry out the commission's oversight duties. Section 60-02-05 provides a procedure for resolving disputes relating to grain delivered to a public warehouse and which relate to grain grading, dockage, vomitoxin level, moisture content, or protein content. The sample grain involved in any dispute must be sealed in a proper container forwarded to be inspected by a federal licensed inspector or mutually agreed upon third party. The person requesting the inspection pays the cost of the test. The grain inspector determines the quality of the grain based on the inspection rules and grades adopted by the United States Secretary of Agriculture.

Chapter 60-02.1 addresses grain buyers. Under Section 60-02.1-03, the Public Service Commission has the authority to oversee grain buyers in the state. Under Section 60-02.1-04, the commission may employ a federal licensed inspector to carry out the commission's oversight duties. Section 60-02.1-05 provides a procedure for resolving disputes relating to grain grading, dockage, vomitoxin level, moisture content, or protein content. The sample grain involved in any dispute must be forwarded to be inspected by a federal licensed inspector or mutually agreed upon third party.

Previous Study

The 1993-94 interim Agriculture Committee studied systems used in the testing of wheat protein and how the consistent protein testing of wheat can be encouraged. The final report of that committee indicated, under rules adopted by FGIS, all official protein analyses must be performed in accordance with the procedures prescribed by the service and must be performed by authorized or licensed employees of the service at delegated or designated agencies. The report stated in an effort to measure larger samples and reduce human error, FGIS required official tests to be done while using whole grain analyzers. Testimony indicated grain testing is more of an art than a science and sampling errors may occur for a variety of reasons, including human error, improperly calibrated or used testing equipment, and failure to follow proper sampling methods, or if grain buyers do not use the testing procedures outlined by FGIS. The committee recommended a concurrent resolution urging FGIS to disseminate useful information about technological and regulatory changes affecting the grading of wheat and encourage the use of contractual provisions that require the acceptance of first official grades as the price and quality determinants at destination ports.

Testimony and Committee Considerations

The committee received information from a representative of FGIS regarding the practices and procedures of vomitoxin testing. The Federal Grain Inspection Service's mission is to facilitate the marketing of grain, oilseeds, and related agricultural commodities. The Federal Grain Inspection Service carries out its mission by establishing standards for grain quality assessments, regulating grain handling practices, and managing a network of federal, state, and private laboratories that provide official grain inspection and weighing services. The occurrence and concentration levels of DON/vomitoxin are directly related to the weather conditions during key stages of crop development. It is not possible to eliminate the occurrence of vomitoxin in cereal grain crops through agronomic practices and it occurs in some geographic locations at significant levels nearly every crop year, especially in wheat and barley.

According to the information, FGIS provides official testing services for vomitoxin for both domestic and export grain lots using rapid testing methods at grain receiving sites throughout the United States. The United States Grain Standards Act mandates the inspection of all export grain lots by FGIS, or with FGIS oversight, with few exceptions. Official testing for vomitoxin is not mandatory and is performed upon request of the buyer or seller of the grain. However, testing often is requested since contracts between buyers and sellers often contain vomitoxin maximum level specifications.

Vomitoxin is regulated internationally, and countries that import United States grain have implemented regulations with maximum levels from 1.1 to 2.0 parts per million for unprocessed cereal grains. Some export contracts between buyers and sellers of wheat contain maximum level specifications for vomitoxin as low as 0.8 parts per million.

All grain inspection procedures have variability associated with the measurement result, which is caused by random variation in factors that cannot be completely controlled. There are two reasons why this variation is larger for mycotoxins, including vomitoxin, than for some other grain quality factors. First, a single wheat kernel can have vomitoxin concentration levels of 200 parts per million or higher and other kernels may contain a level near zero. Heterogeneity in the sample adds variability because sampling procedures will sometimes include this high-level kernel and other times it will not. Second, the variability in chemical analyses such as those for vomitoxin is higher because of the extremely low concentration levels. Vomitoxin concentrations of interest are in the parts per million range, whereas other quality factors are in the parts per hundred range or higher.

According to the testimony, official FGIS procedures for the sampling and testing of grain lots for vomitoxin have been optimized to minimize the overall variability that occurs, without making the test too expensive. The main procedures affecting the variability are those used to sample the lot, those used to prepare the sample for analysis, and the procedures involved in the final chemical analysis. Official FGIS service providers are required to use FGIS sampling and subsampling procedures, to use FGIS-approved rapid test kits, to provide trained and licensed technicians, and to participate in FGIS quality assurance programs. Unofficial testing is performed at country elevators due to the need to provide extremely rapid testing during harvest when trucks are lined up to deliver grain loads, which can lead to much larger variability and inaccurate assessments of the truck lot concentration.

The Federal Grain Inspection Service testing procedures are designed to minimize variation in vomitoxin results. Overall variability includes contributions from sampling, sample preparation, and analysis steps. A smaller test sample size increases overall testing variability. A 95 percent probability range of 0.68 to 1.3 parts per million is a 50 percent variation.

The Federal Grain Inspection Service does not have any authority or control over testing by grain elevators. The Federal Grain Inspection Service requires test kit manufacturers to comply with FGIS recommended grain sample sizes to participate in the program and be certified as an FGIS test kit. Variance can increase exponentially if elevators are using different testing procedures. Multiple tests would reduce variation. However, multiple tests cost both time and money, and during harvest season, many producers and elevators do not want to spend additional money or take the extra time to run multiple tests. The Federal Grain Inspection Service procedures require testing equipment be cleaned between tests to ensure a sample has not been contaminated by a previous test sample.

The committee received information from representatives of NDSU regarding grain breeding, genetics research, and the development of vomitoxin and protein resistant grains. Before 1993, little was known about breeding vomitoxin and fusarium head blight resistant strains of grain or controlling the related issues with fungicides. Vomitoxin testing methods are accurate, but there are many opportunities for sampling errors, variance, and standard deviations during the testing process, which can lead to a wide range of outcomes.

According to the testimony, it is easier to remove and clean infected wheat grains if the infection is detected early, and more difficult if the infection is detected later. Barley is less prone to visible symptoms of fusarium head blight and vomitoxin. The infection can continue to grow during malting and be transferred to beer. Fusarium can continue to grow and produce vomitoxin even after harvest and the grain being placed in storage. There is no immunity to fusarium head blight and vomitoxin because it has complex genetic traits. Identifying resistant breeding lines takes time to research, cross breed, and requires extensive disease screening nurseries. The testimony indicated some progress has been made in developing moderately resistant wheat and barley varieties since the late 1990s and early 2000s. Research has shown fungicide understanding and application timing windows are improving and researchers are gaining more control in suppressing fusarium and vomitoxin. New fungicides are being developed and likely will be available in 2019 or 2020.

The committee received information from a representative of the North Dakota Grain Dealers Association regarding methods to improve consistency and reduce variability in vomitoxin testing. The challenge of the grain industry is to move commodities from areas of surplus to areas of deficit, while providing for quality, regulatory compliance, safety, and cost efficiency. Moving commodities is done in bulk, and the loads are comingled with the grain of many producers. According to the testimony, it is impossible to keep the varieties of grain completely separate because grain comes from multiple farms and comingled at the elevator. The grain is moved to a regional terminal where it can be comingled again. Finally, grain from multiple regional terminals is moved to an export terminal to be shipped overseas, where it is comingled yet again. The testimony noted one of the issues in improving consistency and reducing variability is that different segments of the supply chain have different definitions and standards of quality. There also are inconsistencies between domestic and international grain graders. Grain quality can deteriorate during shipping or while being stored in an elevator.

The committee received information from a representative of the North Dakota Wheat Commission regarding methods to improve consistency and reduce variability in vomitoxin testing. Some producers are being pushed out of the market due to the increasingly high standards in quality from foreign buyers despite the safe consumption levels being lower, which leads to varying levels of price discounts and acceptance rates by grain handlers and millers as vomitoxin levels increase. Entire trainloads and overseas shipments of grain have been rejected due to the levels of vomitoxin in the sample test once the shipment arrives at its destination despite being below the threshold when tested before shipping. This leads to significant economic losses to the producers and elevators.

The committee received information from a representative of the North Dakota Grain Growers Association regarding practices and procedures involved in the testing of vomitoxin and methods to improve consistency and reduce variability in vomitoxin testing.

The committee received information from a representative of the North Dakota Department of Agriculture regarding concerns associated with the testing, variability, consistency, falling numbers, and protein of grains associated with vomitoxin. The testimony noted, in 2016, numerous producers were frustrated with growing grain testing inconsistencies that cost time and money. There have been reports of producers taking the same grain sample to multiple elevator locations for testing and receiving wildly different results. As a result, it was suggested distrust in the system is growing. According to the testimony, all grain elevators in the state have a level of inconsistency when it comes to the testing of grains, but there are several that seem to have more issues than others, which may suggest human error as the main culprit.

The committee received information from a representative of the Public Service Commission regarding the state's role in the testing and regulation of vomitoxin and the interaction between state and federal laws regarding vomitoxin and the enforcement of those laws. The commission's role in the grain dispute resolution under Sections 60-02-05 and 60-02-05.1 is a requirement to produce and distribute the notice outlining the dispute resolution process which licensees must post in their facilities. The commission's grain warehouse inspectors verify the notice is posted when at the facility for an inspection.

The Public Service Commission is charged with overseeing the licensing and bonding of grain warehouses, facility-based grain buyers, and roving grain buyers. The commission employs 1.75 full-time equivalent (FTE) licensing inspectors who ensure licensees are adhering to generally accepted business practices, are adequately bonded, and have sufficient grain inventories on hand to cover the licensee's cash and grain storage obligations. Additionally, the licensing inspectors inspect for compliance to state laws and administrative rules. Inspectors also assist in complaint investigation and resolution, insolvency processes, and other duties.

Sections 60-02-27 and 60-02.1-19 established the standard that all warehouses and grain buyers are required to purchase grain in accordance with the federal standards with the exception of dry edible beans. Grain may be purchased utilizing nonfederal standards if the standards are agreed to in writing by the warehouseman and the owner of the grain. The commission may prohibit the use of nonfederal standards only after a hearing. Warehouses handling dry edible beans are required to file a policy with the commission outlining purchasing, handling, storing, and delivering beans. The only state grading criteria required by state law is that the dockage must be removed before testing under Sections 60-02-28 and 60-02.1-20.

Conclusion

The committee generally agreed while vomitoxin, protein, and falling numbers are issues that plague producers and elevators, there is little that can be done legislatively because much of the grain quality standards are dictated at the federal level and by international importers that buy North Dakota grain on the world market. The committee recognized additional research and funding dedicated to improving grain testing methodology, technology, knowledge of safe consumption levels of vomitoxin, fungicides, and breeds of grain resistant to vomitoxin and other blights is necessary.

The committee makes no recommendation regarding its study of the practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein.

NUTRIENT MANAGEMENT PLANS DEVELOPED BY THE STATE DEPARTMENT OF HEALTH

Section 3 of House Bill No. 1390 (2017) directed a study to review and monitor the nutrient management plan developed by the State Department of Health.

Background

According to the National Oceanic and Atmospheric Administration of the United States Department of Commerce, nutrient pollution is the process by which too many nutrients, mainly nitrogen and phosphorus, are added to bodies of water and act like fertilizers to cause excessive growth of algae in a process called eutrophication. An excessive amount

of algae in a body of water can lead to the death of many indigenous species of animals within the body of water due to a reduced level of oxygen. Human activities often are a direct contributing factor to the amount of nutrients introduced into a body of water.

According to the United States Environmental Protection Agency (EPA), the primary sources of nutrient pollution are agricultural uses, including animal manure, excess crop fertilizer, and soil erosion; storm water that carries pollutants from rooftops, sidewalks, and roads into local waterways; wastewater from sewer and septic systems; fossil fuels that increase the amount of pollutants in the air and water; and pollutants from domestic uses, including home fertilizer, pet waste, soaps, and detergents. Nutrient pollution is an issue in streams, rivers, lakes, bays, and coastal waters of the United States.

Federal Law

Control of nutrient pollution is a requirement of the federal Clean Water Act. The Clean Water Act establishes the structure for regulating the discharge of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis for the Clean Water Act was enacted in 1948, but was reorganized and expanded in 1972 with the "Clean Water Act" becoming the common name. The Clean Water Act made it unlawful to discharge pollutants from a point source into navigable waters unless a permit was obtained through the National Pollutant Discharge Elimination System. The Environmental Protection Agency regulates discharges of pollutants from municipal and industrial wastewater treatment plants and sewer collection systems and storm water discharges from industrial facilities and municipalities.

Standards Utilized by Other States

In 1997, the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, commonly known as the Hypoxia Task Force, was created to address the growing problem of pollution in the Gulf of Mexico caused by excess nitrogen and phosphorous. The 12 member states of the task force are Iowa, Mississippi, Minnesota, Louisiana, Missouri, Indiana, Illinois, Wisconsin, Kentucky, Tennessee, Arkansas, and Ohio. The task force works to provide executive-level direction and support in coordinating the actions of the participating members working on nutrient management within the watershed pursuant to the most recent action plan created in 2008.

The 2008 action plan lays out a number of guiding principles. The principles encourage actions that are voluntary, incentive-based, practical, and cost-effective; utilize existing programs, including existing state and federal regulatory mechanisms; follow adaptive management; identify additional funding needs and sources during the annual agency budget processes; identify opportunities for, and potential barriers to, innovative and market-based solutions; and provide measurable outcomes as outlined in the 3 goals and 11 actions of the plan. The goals of the plan are to reduce the average area extent of the Gulf of Mexico hypoxic zone to less than 5,000 square miles; to restore and protect the waters of the 31 states and tribal lands within the Mississippi/Atchafalaya River Basin through implementation of nutrient and sediment reduction actions; and to improve the communities and economic conditions across the basin through improved land management and a cooperative, incentive-based approach.

Montana, South Dakota, Iowa, and Minnesota have taken action to propose and implement nutrient reduction strategies or nutrient management plans in surface waters that impact agricultural, municipal, recreational, and industrial uses.

North Dakota

The State Department of Health has adopted rules for water quality standards that are effective for Clean Water Act purposes pursuant to Chapter 61-28 regarding the control, prevention, and abatement of pollution of surface waters and Chapter 23-33 regarding ground water protection. The department will continue to administer both chapters until the transfer of that authority to the newly created Department of Environmental Quality is complete. The rules regarding the control, prevention, and abatement of pollution of surface waters are located in North Dakota Administrative Code Article 33-16. The rules establish procedures governing the discharge of pollutants into the waters of the state as required as a condition precedent to the state's participation in the National Pollutant Discharge Elimination System under the Clean Water Act and the pretreatment of wastewater. The rules also provide a system for classifying waters of the state, standards of water quality, and permit procedures for animal feeding operations.

In 2012, the State Department of Health, in collaboration with other agencies and stakeholder sectors, including industry and agriculture, began developing a state nutrient reduction strategy to reduce the amount of nutrients in the surface waters of the state. There are two divisions within the State Department of Health that develop nutrient management plans. The Division of Waste Management develops nutrient management plans for agricultural processors, such as those that process potatoes and sugar beets, and the Division of Water Quality develops nutrient management plans for confined animal feeding operations.

Testimony and Committee Considerations

The committee received information from a representative of the State Department of Health, Division of Water Quality, regarding the nutrient management plans developed by the department for agricultural processors and confined animal feeding operations. The purpose of the nutrient management plans is to develop and implement efficient and cost-effective approaches to reduce the delivery of nutrients. The oversight of nutrients from agricultural processors and confined animal feeding operations includes asking entities to prepare nutrient management plans to detail how the entities will utilize nutrient-rich materials in a beneficial manner on the land. The department tests the nutrient content of the material being applied, the nutrient content of the soil, and appropriate methods of application. The department also looks at the sources of nutrients into a body of water to determine the percentage of nutrients the body of water can sustain from both point and nonpoint sources. The department currently is working on a nutrient reduction strategy for the state that will include education and outreach to ensure collaboration between the state, the federal government, and stakeholders to maintain safe water for use by people, agriculture, and livestock.

Conclusion

The committee makes no recommendation regarding its study of nutrient management plans developed by the State Department of Health.

NORTH DAKOTA STATE SOIL CONSERVATION COMMITTEE

Section 14 of Senate Bill No. 2020 (2017) directed a study of the State Soil Conservation Committee. The study directive required a review of the duties, responsibilities, and related costs and efficiencies of the committee and related NDSU Extension Service staff, the needs of the soil conservation districts, and the necessity to continue the State Soil Conservation Committee.

Testimony in support of the study expressed concerns that the State Soil Conservation Committee requires too much funding to administer continually shrinking grants to the various soil conservation districts to justify the committee's continued existence. Concern also was expressed that it costs approximately $250,000 to disburse $1 million in grants and that the soil conservation districts can utilize the North Dakota outdoor heritage fund for grant money and no longer need to rely on the committee. It was suggested soil conservation activities could be moved from the NDSU Extension Service to the North Dakota Association of Soil Conservation Districts where there is greater support and staff, or the work could be completed by other existing entities, and the State Soil Conservation Committee could be eliminated.

Background

Federal Soil Conservation Efforts

According to the USDA's Natural Resources Conservation Service (NRCS), the NRCS has been working with landowners, state and local governments, and other federal agencies to maintain healthy and productive working land since 1935. In 1935, Congress passed Public Law 74-46 (the Soil Conservation Act) which directed the Secretary of Agriculture to establish the Soil Conservation Service as a permanent agency in USDA. The agency was created to prevent the "wastage of soil and moisture resources on farm, grazing, and forest lands" after observing how the threat of soil erosion by water and wind reduced the ability of the land to sustain agricultural productivity during the dust bowl conditions of the early 1930s. The agency worked to advance scientific understanding of erosion processes, develop effective conservation practices, and extend conservation assistance to farmers. The agency accomplished this by organizing soil conservation districts to lead the conservation efforts at the local level. There are over 3,000 conservation districts in the country. The United States Department of Agriculture drafted the Standard State Soil Conservation District Laws, which was sent to all state governors. In 1936, the agency assumed responsibility for performing surveys and devising flood control plans for watersheds under Public Law 74-738 (the Flood Control Act). In 1938, the agency was made responsible for administering the USDA's drainage and irrigation assistance programs, the snow survey and water supply forecasting program, the water facilities program, the land utilization program, and the farm forestry program. These programs made the agency the lead lands conservation agency. The name of the agency officially changed to the Natural Resources Conservation Service in 1994.

North Dakota

In response to the Federal Soil Conservation Act, the 1937 Legislative Assembly adopted Chapter 4-22 regarding soil conservation districts to provide for the conservation of the soil and soil resources of the state and to prevent soil erosion. During the 2017 legislative session, as part of the ongoing agricultural rewrite project, Chapter 4-22 was repealed and the contents of the chapter were moved into the newly created Chapter 4.1-20. Among the duties of the State Soil Conservation Committee under Section 4.1-20-05, the committee is responsible for assisting local soil conservation districts in carrying out local conservation districts powers and programs. In addition, that section delegates the committee the authority to distribute money appropriated by the Legislative Assembly for grants to soil conservation districts. For the 2017-19 biennium, the State Soil Conservation Committee received a general fund appropriation of $1,091,520 for soil district conservation grants.

Testimony and Committee Considerations

The committee received information from a representative of the State Soil Conservation Committee regarding the duties, responsibilities, costs, efficiencies, and needs of the committee. The North Dakota State University Extension Service is directed under Section 4.1-20-06 to assist the committee in performing the committee's duties under Chapter 4.1-20, within the limits of legislative appropriations. One of the primary responsibilities of the committee is to distribute Soil Conservation District Assistance Program funds allocated by the Legislative Assembly biennially, and to assist soil conservation district supervisors in carrying out the soil conservation programs. The funds are awarded on a competitive basis to the soil conservation districts in the state, taking into consideration discrepancies in county mill levies and property valuations. The district assistance programs promote soil, water, and plant health to create resilient sustainable landscapes by emphasizing conservation practices that maintain adequate vegetative cover or residue to protect lands from wind and water erosion. District staff is funded by the grants and work with the Extension Service, NRCS, and other agencies to promote conservation practices and information. The money allocated by the committee to local conservation districts through the assistance programs goes toward paying the salaries of district employees. The money is not used to fund conservation projects. During the 2017-19 biennium, a soil conservation district may apply for up to $40,000 of funding through the program. The committee works directly with the soil conservation program coordinator of the Extension Service to administer soil conservation laws, agency budgets, surface mining reports, the district assistance program, and other laws and programs.

The committee received numerous letters from soil conservation districts around the state in support of the ongoing efforts of the State Soil Conservation Committee.

The committee received information from a representative of the NDSU Extension Service regarding the role of the Extension Service in relation to the State Soil Conservation Committee. The Extension Service helps educate the public in science-based fields, and is in a supporting role regarding soil conservation. The Extension Service assists the State Soil Conservation Committee by organizing meetings, publishing notices and meeting minutes, managing the operating budget, maintaining a committee website, and providing staff and support for the benefit of the committee and the local conservation districts. The Extension Service also manages the conservation committee's budget, because the budget has been included in the Extension Service's budget since 1997. The committee had its own budget and staff, but that was eliminated in 1997 in a cost-saving and efficiency effort.

The North Dakota State University Extension Service currently has 1.6 FTE positions allocated in support of the State Soil Conservation Committee consisting of a full-time program specialist, a part-time administrative assistant, and a part-time extension agent. The salaries and benefits of the positions was $257,623 last biennium. The operating expenses for the committee have varied between $7,500 and $14,000 per biennium since 2007 for travel, and the rental of meeting facilities. Operating expenses incurred by the Extension Service in assistance of the committee relate to employee travel costs, office rent, computer equipment, information technology support, and office supplies. There is not a formal agreement between the State Soil Conservation Committee and the Extension Service, but a working relationship has evolved as necessary. Any work done by the Extension Service on behalf of the committee is billed to the internal line item of the committee in the Extension Service budget. According to the testimony, the amount of overhead expenses likely would be the same regardless of whether the grant disbursements were $1 million or $5 million per biennium. The operation is funded at a minimal amount and it would be difficult to reduce further as the committee has no staff of its own. Ongoing efforts are underway between the State Soil Conservation Committee and the Extension Service to enter a memorandum of understanding to clarify the roles of each entity in the pursuit of conservation efforts. An amendment was suggested to Section 4.1-20-19 to make ongoing training for soil conservation district supervisors mandatory.

A representative of the North Dakota Department of Agriculture testified state funding is critical to support the State Soil Conservation Committee and local districts, and loss of financial assistance would severely diminish the ability of local districts to fulfill conservation duties.

The committee received information from a representative of the North Dakota Association of Soil Conservation Districts regarding the structure, duties, and responsibilities of the association, the association's relationships with the local districts, and the programs and services the districts offer. The association is a nonprofit corporation that promotes the welfare of the local conservation districts, which are political subdivisions, and the people employed by the districts. The association facilitates sharing and cooperation among the local districts, and at the national level where districts and associations join to discuss issues and affect wise use of soil and water. The association also represents the districts in relationships with the State Soil Conservation Committee and other state and federal agencies. Local conservation districts rely on mill levy funds to support conservation efforts, but the mill levy amounts fall short. Approximately 60 employees of local conservation districts rely on mill levy funds and funding through the assistance program for continued employment. According to the testimony, without the employees at the local level, the local districts would be unable to function. There are approximately 116 total district employees in the state. There are 54 FTE positions, one for each conservation district in the state.

The committee received information from a representative of the Game and Fish Department regarding the role of the department in soil conservation efforts and the department's relationship with the State Soil Conservation Committee. According to the testimony, the department has a long history of working with the committee on conservation efforts such as tree planting and entering contracts with local districts to provide cost-sharing for conservation projects. It was noted outdoor heritage fund grants have been issued in the past, but those funds are authorized for the funding of projects. It also was noted the advisory board of the outdoor heritage fund has not been receptive to funding staffing needs of local conservation districts, and funding those needs would require a statutory change.

The committee received information from a representative of NRCS regarding the conservation efforts among various states. A memorandum of understanding exists among the Association of Soil Conservation Districts, the Resource Conservation & Development Association, the State Soil Conservation Committee, the Conservation District Employees Association, and NRCS. These entities represent the five core partnerships in the state regarding soil conservation. The memorandum of understanding is modeled in all 50 states. It was noted the State Soil Conservation Committee is the link between all state and federal associations and agencies. According to the testimony, the State Soil Conservation Committee gives guidance on how best to utilize state and federal dollars for conservation efforts.

During the course of the study, the committee considered a bill to amend Section 4.1-20-19. The bill draft would require an individual elected or appointed as a soil conservation district supervisor to receive annual training as determined by the State Soil Conservation Committee. Current law does not require a supervisor to undergo any additional training once the supervisor completes the initial training session. The bill received support from the NDSU Extension Service and other interested parties, who contended annual training helps increase the knowledge and skills of district supervisors.

Conclusion

The committee recommends House Bill No. 1026 to require ongoing training for soil conservation district supervisors.

CREATING A STATE WETLANDS BANK

Section 1 of Senate Bill No. 2245 (2017) directed a study of the desirability and feasibility of creating a state wetlands bank. The study directive required consultation with stakeholders to examine land parcels under the control and management of the state, which are suitable for wetlands mitigation.

As introduced, Senate Bill No. 2245 would have required the Game and Fish Department to identify land parcels that may qualify for use as wetland mitigation on lands under the jurisdiction, management, or control of either the Game and Fish Department or the Department of Trust Lands, and submit the list to the Agriculture Commissioner. The bill would not have created a wetlands bank, but rather only would have identified land parcels under the control of various state agencies which may be suitable for wetlands mitigation. The bill was amended to include NRCS and the Army Corps of Engineers in the consultation process. The amendment also included consideration of lands remediated by the Department of Mineral Resources through the abandoned oil and gas well plugging and site reclamation fund. The bill was amended in the House to direct a Legislative Management study due to concerns that creating wetlands on state-owned property could take away from farmers renting land from the state.

Background

According to the NRCS, wetland mitigation banking is the "restoration, creation or enhancement of wetlands for the purpose of compensating for unavoidable impacts to wetlands at another location. Wetland mitigation banking is commonly used to compensate for wetland impacts from development, but it is also used for impacts from agriculture."

Federal Guidelines

In 1970, under Public Law 91-559 (84 Stat. 1468-1471), Congress enacted the Water Bank Act. The Act authorized the Secretary of Agriculture, in coordination with the Secretary of the Interior, to enter contracts with landowners to preserve wetlands through the use of annual payments.

In 1980, the EPA finalized regulations and criteria used in evaluating activities regulated under Section 404 of the Clean Water Act. In 1990, pursuant to a memorandum of agreement established between the EPA and the United States Department of the Army, policies and procedures were developed to be used in the determination of the type and level of mitigation necessary to demonstrate compliance with the Clean Water Act Section 404 guidelines. The policies and procedures were used to avoid adverse impacts to aquatic resources, minimize the impacts if they cannot be avoided, and practice compensatory mitigation when unavoidable impacts occur. Methods for compensatory mitigation under the policies and procedures include restoration, establishment, enhancement, and preservation of wetlands.

The three main mechanisms for compensatory mitigation are--permittee-responsible mitigation, which entails the restoration, establishment, enhancement, or preservation of wetlands undertaken by a permittee to compensate for wetland impacts from a specific project; mitigation banking, which is a wetland area restored, established, enhanced, or

preserved and set aside to compensate for future conversions of wetlands for development activities; and in-lieu-fee mitigation, which occurs when a permittee provides funds to an in-lieu-fee sponsor. The sponsor collects funds from multiple permittees to pool resources to build and maintain a mitigation site. In 2008, the EPA and the Army Corps of Engineers, through joint rulemaking, expanded the Clean Water Act Section 404 guidelines to include standards for all three mechanisms for providing compensatory mitigation.

The Food Security Act of 1985 included provisions prohibiting USDA program benefits to agricultural producers that convert wetlands to croplands. In 1995, the USDA, Army Corps of Engineers, United States Fish and Wildlife Service, and the EPA published the *Federal Guidance for the Establishment, Use and Operation of Mitigation Banks*.

North Dakota Laws

Section 4.1-01-15 directs the Agriculture Commissioner to create and maintain an electronic database of wetland credits available for purchase by an agricultural landowner.

Chapter 20.1-02 addresses the Game and Fish Department. Sections 20.1-02-18.4, 20.1-02-18.5, and 20.1-02-18.6 were enacted in 1987 and repealed in 1997. The repealed sections related to a Wetlands Mediation Advisory Board. Under the law, the advisory board was to meet at the call of the Governor, and included the Governor, the Agriculture Commissioner, the president of the North Dakota Farmers Union, the State Engineer, and the regional director of the United States Fish and Wildlife Service. The purpose of the advisory board was to mediate disputes or conflicts by persons aggrieved by a decision of the United States Fish and Wildlife Service pertaining to wetlands.

During the 1995-96 interim, the Government Organization Committee conducted a study of the membership, duties, and responsibilities of all boards, councils, committees, and commissions of state government. One of those boards was the Wetlands Mediation Advisory Board. The committee received testimony indicating that since the creation of the advisory board in 1987, the board had never met and that the federal government likely would not be bound by a decision of the board due to the Supremacy Clause in the United States Constitution. The committee recommended House Bill No. 1056 (1997) to abolish the board.

Section 20.1-02-18 gives the state's consent, subject to the Governor's approval, to the federal government's acquisition of land or water to establish migratory bird reservations pursuant to the federal Migratory Bird Conservation Act.

Section 20.1-02-18.1 requires the Governor to submit proposed acquisitions--along with detailed impact analysis from the federal agency involved--of land, wetland, and water areas by the United States for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes--to the board of county commissioners of the county in which the land, wetland, or water areas are located for the board's recommendations.

Section 20.1-02-18.2 provides a landowner may negotiate with the United States Department of the Interior, or its agencies, for leases, easements, or wetland areas sought by the federal government for use as waterfowl production areas, wildlife refuges, or other wildlife purposes.

Sections 57-02-08.4 and 57-02-08.5 address property tax exemptions for owners of wetlands. Under Section 57-02-08.4, a landowner may qualify for a property tax exemption if the landowner annually files, with the County Director of Tax Equalization, a legal description of the wetland for which the exemption is claimed and an agreement to not drain, fill, pump, or concentrate water in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. Section 57-02-08.5 requires the County Auditor to certify to the Tax Commissioner the total amount of property tax that would have been due on the exempt property within the county.

Chapter 61-32 addresses drainage of water in the state. Section 61-32-01, which was enacted in 1987 and repealed in 1995, stated the intent of the chapter, and provided agriculture was of great concern in the state and agricultural concerns must be accommodated through wetlands protection. Section 61-32-05, which was enacted in 1987 and repealed in 1995, directed the State Engineer and the Director of the Game and Fish Department to establish a wetlands bank. The section required the State Engineer to keep a record of acres of replacement wetlands debited from and credited to the wetlands bank.

Chapter 61-31, enacted in 1981, creates a water bank program under the guidance and rulemaking authority of the Agriculture Commissioner. The chapter authorized the commissioner to enter 5- or 10-year agreements with landowners for the conservation of wetlands. The chapter requires landowners, after any agreement is reached, to place eligible wetlands into the program and to not drain, burn, fill, or destroy the area. Section 61-31-04 prevents landowners from using the area for agricultural purposes Section 61-31-05 requires the Agriculture Commissioner to make annual payments to the landowner under the agreement and provide advice and practices regarding conservation and

development of wetlands. Section 61-31-09, which was repealed in 1993, required the State Engineer to notify the Agriculture Commissioner of any drainage permit denied by the State Engineer. The section required the commissioner to investigate the wetland area proposed to be drained and see if the area was eligible for inclusion under the state water bank program.

Other States

Minnesota and South Dakota have taken action to implement wetland mitigation banking.

In 1991, Minnesota enacted the Wetland Conservation Act to protect wetlands not covered under the Department of Natural Resources public waters permit program. Rules for administering the Act are adopted by the Minnesota Board of Water and Soil Resources. Under the Act, wetlands cannot be drained or filled unless replaced by restoring or creating wetland areas of at least equal public value under an approved replacement plan. A replacement plan under Minnesota law must demonstrate wetland impacts have been avoided as much as possible, impacts have been minimized as much as possible if impacts cannot be avoided, and unavoidable impacts have been replaced by the restoration or creation of new wetlands of equal or greater public value elsewhere. Replacement plans require specifics as to the location, size, and type of replacement wetlands. In addition, rather than restoring or creating a wetland, a replacement plan may provide for the use of credits purchased from the state wetland bank operated by the Board of Water and Soil Resources. The amount of wetland bank credit is related to the extent of functional improvement and ranges from 0.5 to 1.0 credits per acre of restored or created wetland in one of 10 wetland bank service areas in the state, which are based on watershed boundaries. The credits can be purchased and held for later use or resale.

In 2016, the South Dakota Farm Bureau received a $1 million grant from the USDA to establish an agriculture wetland mitigation bank in the state, under the Wetland Mitigation Banking Grant Program created in the Agricultural Act of 2014. The Farm Bureau used the money, in collaboration with several other entities and the NRCS, to create the South Dakota Wetland Exchange.

Testimony and Committee Considerations

The committee received information from a representative of the Department of Agriculture regarding the funding, purpose, eligibility, and payment rates of the department water bank program. The Agriculture Commissioner initially was authorized to create a water bank program by the 1987 Legislative Assembly. The program was created to allow the Commissioner to enter agreements with landowners for the conservation of wetlands. The agreements are for periods of 5 or 10 years, and during that time landowners are to place the wetland and adjacent areas into conservation to not drain, burn, fill, or otherwise destroy the wetland. At the discretion of the Commissioner; however, the area may be used for agricultural purposes. Under the agreements, the department may make lump sum or annual payments at an agreed upon rate, and provides advice and assistance for conservation practices and uses. In addition, under drought conditions, 100 percent of the grassland under contract is made available for grazing or haying. According to the testimony, under the program, contracts have been entered with 21 landowners covering approximately 760 acres of wetland and 2,000 acres of uplands. Cropland payments are contracted at $40 per acre, wetlands at $20 per acre and non-tillable acres at $20 per acre. The Game and Fish Department also will award an additional $2 per acre to any landowner that adds public access to the contracted acres.

A second wetland management program, the Wetland Credit Database, is housed in the Department of Agriculture. The program, created in 2013, is a resource for landowners wishing to buy credits to mitigate a wetland, as well as landowners with wetland credits to sell. Landowners can contact the department to coordinate with landowners that need to buy credits with landowners that have credits for sale and vice versa. It was noted the information is forwarded to the NRCS, which works with the producers through the mitigation process. The interest in the program has been small, as only nine landowners have expressed willingness to participate.

The committee also received information from a representative of the NRCS regarding federal wetland mitigation rules and regulations. The Food Security Act of 1985 sets forth the requirements for agricultural wetland mitigation. Participation in USDA programs requires compliance with the wetland "swampbuster" law that was a part of the Act. A federal water bank program, similar to the state water bank program under Public Law 91-559, receives $4 million of federal funding annually. The money primarily has been directed to the Devils Lake Basin area to help 294 producers combat excess water on 45,000 acres of property. The federal law would allow for a program similar to what is already in place under the Department of Agriculture, and would allow for 10-year renewable agreements with landowners. Under the federal law, if mitigation occurs and wetlands are placed in a new location, maintenance is required to ensure the area properly functions as a wetland, including ensuring invasive species do not invade the area. If using a wetland bank, the bank is responsible for maintaining the wetland not the landowner. The testimony indicated creating new wetlands is more expensive than restoring or enhancing existing wetlands.

The committee received information from a representative of Ducks Unlimited regarding private wetland mitigation efforts, structure, and process. Ducks Unlimited established an in-lieu-fee mitigation service in 2014 and was approved

by the Army Corps of Engineers as the state's only in-lieu-fee provider of mitigation credits. Under the program, a private contractor provides a product for developers needing mitigation credits for wetland impacts. The developer contacts Ducks Unlimited with a need for mitigation credits and a credit availability letter is issued with the number of credits, the service area, the price, and a 6-month hold. A permit application then is submitted to the Army Corps of Engineers with the credit availability letter. Once a permit is issued, Ducks Unlimited has 3 years to complete the mitigation project. Since 2014, 97 credits have been sold under the program with an additional 35 requests pending. According to the testimony, wetlands mitigation is governed by rigorous, highly technical federal standards, and the standards developed for agricultural mitigation may be different from the standards developed by the Army Corps of Engineers for developmental mitigation under the Clean Water Act.

The committee received information from representatives of the South Dakota Farm Bureau and Wenck Associates, Inc., regarding wetland mitigation efforts in South Dakota. Wetland mitigation did not exist in South Dakota until 2012, when the state created a legislative subcommittee to address and increase agricultural wetland mitigation and provide a framework to meet the regulatory criteria in place under the NRCS rules, and to provide a plan to conduct mitigation. The South Dakota Farm Bureau is tasked with contracting with professional service providers for the technical work associated with wetland mitigation. The Farm Bureau contracts with Wenck Associates, Inc., an engineering and environmental consulting firm. The federal "swampbuster" provisions prohibit USDA program participants from converting wetlands unless there is compensation through wetland mitigation on an acre-for-acre basis with no net loss of wetlands. The functions and values in the mitigation area must be equal to or greater than the wetlands converted or destroyed. The framework established in South Dakota for wetland mitigation, which was accepted by the NRCS, provides uniform guidance for agricultural wetland mitigation banks. The framework includes guidance on the establishment, use, and operation of wetlands for mitigation.

South Dakota also received a USDA grant to assist in mitigation banking. The grant requires South Dakota to develop and market 300 mitigation credits for sale. The Farm Bureau is responsible for monitoring credit trading in the state, developing and holding the perpetual easement placed on each bank site, and long-term managing of each bank site. Under the program, 12 percent of credit revenue from sales is placed in a nonwasting fund to provide for the management of bank sites, 3 percent is used for long-term management and easement holding, and 5 percent is used for administrative costs of the Farm Bureau in listing credits for sale and tracking all bank sales and purchases. The consultant firm designs the sites, approves the plan, and oversees construction. The consultant firm is funded through the grant. The landowner owns the site, provides financial assurances during construction, signs an easement on the area to the Farm Bureau, pays for construction, monitors the site until the credits are sold, pays taxes on the land, and receives 80 percent of the credit revenue sale. Consultant fees and mitigation costs are determined on a site-by-site basis. The cost information is given to the landowner of the site before any agreement. The committee was informed the supply of available wetland sites in South Dakota is outpacing the demand of landowners looking to mitigate. However, the testimony indicated the South Dakota program has been operational since 2013-14 and again is able to offer credits for sale. According to the testimony, the South Dakota program will be able to sustain itself with money generated from credit sales once the federal grant money expires, but it would not have been possible to start the program without the grant money.

The committee received information from a representative of the Game and Fish Department regarding the management of wildlife management areas by the department and the relation to wetland mitigation efforts. According to the testimony, North Dakota has some of the highest densities of wetlands in the United States, and is a key breeding area for waterfowl populations. The department controls and manages approximately 219,000 acres of land for wildlife management areas throughout the state. The lands are managed specifically for the development and enhancement of habitat to maximize wildlife production and public hunting, fishing, trapping, and wildlife viewing opportunities. The lands have been acquired over 100 years and developed to provide premium wildlife and public-use benefit. The department has developed the land under its control and no longer has any land resources to offer for a state wetlands bank or mitigation credits.

The committee received information from a representative of the State Engineer's office regarding the role of the State Engineer and the State Water Commission in wetland mitigation through the management of sovereign land in the state. The engineer is responsible for identifying rivers and lakes within the state which are navigable and therefore, are sovereign to the state. The state takes title to the ordinary high water mark on navigable waters. Sovereign lands are wetlands, and as a result, the ability to use sovereign lands as mitigation acres to offset other wetland impacts does not exist. In the 1980s and 1990s, the State Engineer oversaw a state wetlands bank that since has been repealed. During the existence of the program, only 760 debits were taken out of the bank and 6,900 credits added to the bank.

The committee received information from a representative of the Department of Trust Lands regarding the role of the department in a potential state operated wetlands bank, amount of land held by the department, and potential uses of the land for wetland mitigation. The Board of University and School Lands and the department have a fiduciary responsibility, as outlined in the Constitution of North Dakota and state law, for the management of permanent trust lands

and for assets held for the benefit of the common schools and other education beneficiaries. Through the department, the board competitively leases trust lands for grazing and farming, as well as for the production of minerals, including coal, gravel, clay, potash, and oil and gas. In addition, numerous rights-of-way applications on trust lands are processed each year with application fees and negotiated consideration payments for issued right-of-way agreements providing revenue to the various trusts.

Through the Department of Trust Lands, the board manages 706,609 acres of trust land including 655,955 acres of grant land and 50,654 acres of acquired lands. The Constitution of North Dakota limits the use of grant land to pasture and meadow purposes. Most trust lands are in the western two-thirds of the state. The board's land lease prohibits draining water on or off trust lands. There are certain instances in which a wetland has been converted by the county or township to protect a road, by a lessee to increase watershed size to create a viable livestock water source, or by a lessee to create more acres of palatable forage. Testimony indicated little opportunity exists for wetland mitigation credits on trust lands, and further study would be required to determine if wetland mitigation would present an income producing opportunity for the permanent trust, or if the program would encumber and burden the trusts.

Conclusion

The committee determined South Dakota is significantly ahead of North Dakota in the implementation of a state wetlands bank, and South Dakota had the added advantage of federal grant money, to which North Dakota may not have access. The committee concluded the implementation of a state wetlands bank would require several years and considerable state funding, which would be difficult in the current economic environment. North Dakota also does not have an organization in place to administer the program as South Dakota does with its Farm Bureau.

The committee makes no recommendation regarding its study of the desirability and feasibility of creating a state wetlands bank.

REPORTS

The committee received the following reports:

- A report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities.
- A report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures.

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 Larry Bellew (Chairman), Tracy Boe, Randy Boehning, Roger Brabandt, Mike Brandenburg, Al Carlson, Lois Delmore, Jeff Delzer, Kathy Hogan, Richard G. Holman, Tom Kading, Keith Kempenich, Gary Kreidt, Bob Martinson, Lisa Meier, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Chet Pollert, Mark Sanford, Mike Schatz, Jim Schmidt, Roscoe Streyle, and Don Vigesaa and Senators Bill L. Bowman, Dick Dever, Robert Erbele, John Grabinger, Joan Heckaman, David Hogue, Ray Holmberg, Ralph Kilzer, Jerry Klein, Karen K. Krebsbach, Gary A. Lee, Tim Mathern, Dave Oehlke, Larry J. Robinson, 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 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

The following duties assigned to the Budget Section by law or by Legislative Management directive were acted on during the 2017-18 interim:

1. **Annual report from the North Dakota State University (NDSU) Extension Service (Section 11-38-12)** - This section requires, within the duties of the NDSU Extension Service, an annual report to be presented to the Budget Section regarding any adjustments or increases of full-time equivalent (FTE) positions.
2. **Higher education campus improvements and building maintenance (Section 15-10-12.1)** - This section requires the approval of the Budget Section or the Legislative Assembly for campus improvements and building maintenance of more than $700,000 on land under the control of the State Board of Higher Education (SBHE) which are financed by donations, gifts, grants, and bequests. Budget Section approval can only be provided when the Legislative Assembly is not in session, excluding the 6 months prior to a regular legislative session and the 3 months following the close of a regular session. The Budget Section approval must include a specific dollar limit for each 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 $700,000 or less and the sale of real property received by gift or bequest may be authorized by the board. Any new building or an addition to an existing building with a cost of more than $700,000 requires approval by the Legislative Assembly.
3. **Sources of funds received for construction projects of entities under the control of SBHE (Section 15-10-12.3)** - This section requires each institution under the control of SBHE 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. **SBHE's semiannual project variance reports (Section 15-10-47)** - This section requires the Office of Management and Budget (OMB) to provide to the Budget Section upon request information relating to SBHE's semiannual project variance reports regarding construction projects valued at more than $250,000.
5. **Annual report from the NDSU Main Research Center (Section 15-12.1-05)** - This section requires, within the duties of the NDSU Main Research Center, an annual report to be presented to the Budget Section regarding any adjustments or increases of FTE positions.
6. **Status of the State Board of Agricultural Research and Education (Section 15-21.2-17(10))** - This section requires, within the duties of the State Board of Agricultural Research and Education, a status report to be provided to the Budget Section.
7. **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 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.
8. **State Fire Marshal report on fire departments funding (Section 18-04-02)** - This section provides the 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.

9. **Game and Fish Department land acquisitions (Section 20.1-02-05.1)** - This section requires Budget Section approval for Game and Fish Department land acquisitions of more than 10 acres or $10,000.
10. **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.
11. **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 presidentially declared disasters in the state.
12. **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.
13. **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.
14. **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 the Board 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 1 year of receipt of the certified mail notification.
15. **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 1 year of receipt of the certified mail notification relinquishes its right to recover the property upon approval of the Budget Section.
16. **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 3 years. The Legislative Management has assigned this responsibility to the Budget Section.
17. **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 may approve the payment of bonuses above the 25 percent limitation, but is required to report any exceptions granted under this section to the Budget Section.
18. **Purchase or lease of aircraft by a state agency or entity of state government (Section 54-06-37)** - This section requires Budget Section approval for a state agency or other entity of state government to purchase or lease an aircraft without specific authorization from the Legislative Assembly. This section does not apply to aircraft purchased or leased by the Adjutant General's office or the University of North Dakota (UND) School of Aviation.
19. **Warrants and checks outstanding for more than 90 days and less than 3 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 3 years.
20. **Irregularities in the fiscal practices of the state (Section 54-14-03.1)** - This section requires OMB 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.
21. **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.

22. **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.

23. **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.

24. **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.

25. **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 provide a report each biennium to the Budget Section on the progress being made to reduce the overall number of units owned, master leased, or subsidized by these entities.

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

27. **Department of Corrections and Rehabilitation (DOCR) annual report on the department's prison population management plan (Section 54-23.3-11)** - Section 54-23.3-11 requires DOCR to provide an annual report to the Budget Section regarding the department's prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing.

28. **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 SBHE that have applied for federal grants estimated to be $25,000 or more.

29. **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.

30. **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 7 days after the day of adjournment of the organizational session. The Budget Section was assigned this responsibility.

31. **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 to the Budget Section on funds distributed to the center.

32. **Annual report Standing Rock Sioux Tribe agreements (Section 57-39.8-02)** - This section provides the Budget Section receive a report from the Standing Rock Sioux Tribe annually regarding any agreements entered by the Standing Rock Sioux Tribe under Chapter 57-39.8.

33. **Three Affiliated Tribes investment of oil and gas tax receipts (Section 57-51.2-02)** - This section provides the 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.

34. **Hub city annual report on use of funding received from allocations from the oil and gas gross production tax (Section 12 of House Bill No. 1358 (2013))** - This bill provides the 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.

35. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2018 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium.

36. **Report from the Governor on federal funds (Section 4 of House Bill No. 1001 (2017))** - This section requires the Governor's office to provide a report to the Budget Section regarding the source, amount, and purpose of any additional income from federal or other funds received. This report was also required in Section 3 of Senate Bill No. 2001 (2015).

37. **Industrial Commission litigation fund (Section 5 of House Bill No. 1003 (2017))** - This section requires the Attorney General to provide quarterly reports to the Budget Section regarding all expenditures for litigation-related expenses from the Industrial Commission's litigation fund during the 2017-18 interim.

38. **Report regarding any transfers between line items and between subdivisions in excess of $50,000 (Section 4 of House Bill No. 1012 (2017))** - This section requires the Department of Human Services (DHS) to report to the Budget Section after June 30, 2018, on any transfers in excess of $50,000 made during the 2017-19 biennium between line items within each subdivision and between subdivisions.

39. **Bank of North Dakota loans (Section 20 of House Bill No. 1015 (2017))** - This section amended Section 6-09-15.1 to require OMB to provide a report to the Budget Section regarding any loans obtained from the Bank of North Dakota when the balance in the state general fund is insufficient to meet legislative appropriations. The total principal of any loans may not exceed $50 million.

40. **Property tax increases (Section 26 of House Bill No. 1015 (2017))** - This section amended Section 57-20-04 to require the Tax Commissioner to compile information received from county auditors and prepare a statewide report of property taxes to provide to the Budget Section by April 1 of each year. The report must include the annual increase in property taxes levied by each taxing district of the state after adjusting for property that was not taxable in the preceding year and property that is no longer taxable which was taxable in the preceding year.

41. **Statewide interoperable radio network (SIRN) status reports (Section 7 of House Bill No. 1178 (2017))** - This section requires the Information Technology Department (ITD) to provide status reports to the Budget Section during the 2017-18 interim regarding the implementation and progress of SIRN.

42. **Department of Transportation fees (Section 13 of Senate Bill No. 2012 (2017))** - This section requires the Department of Transportation to provide reports by September 30, 2017, and September 30, 2018, regarding all fees charged by the department in comparison to the actual cost of providing the services for which the fee is charged.

43. **NDSU Extension Service efficiency and effectiveness (Section 15 of Senate Bill No. 2020 (2017))** - This section requires the State Board of Agricultural Research and Education to provide a report to the Budget Section by March 31, 2018, regarding its findings and recommendations to increase the efficiency and effectiveness of the NDSU Extension Service.

44. **Integrated carbon plant project (Section 3 of Senate Bill No. 2196 (2017))** - This section requires SBHE to provide a report to the Budget Section during the 2017-18 interim regarding the status of the integrated carbon plant project at Valley City State University.

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 2018 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. **Industrial Commission contingency funding (Section 7 of Senate Bill No. 2014 (2017))** -This section provides, subject to Budget Section approval, the Industrial Commission may spend $221,737 from its contingencies line item and hire 2 FTE positions if the total number of wells capable of production and injection exceeds 18,200.

3. **Youth Correctional Center study (Section 13 of Senate Bill No. 2015 (2017))** - This section requires DOCR to provide a report to the Budget Section regarding the results of its Youth Correctional Center study.

4. **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.

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 2017-18 interim:

1. **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.

2. **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.

3. **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.

4. **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.

5. **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 6 months prior to a regular legislative session and the 3 months following the close of a regular session.

6. **Termination of food stamp program (Section 50-06-05.1(16))** - 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(18))** - 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. **Consider authorization of additional FTE positions (Section 54-16-04.3)** - This section provides, on the advice of 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.

10. **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 $600,000 was provided for the 2017-19 biennium.

11. **Report from the Industrial Commission on revenue impacts in excess of $20 million (Section 54-17-42)** - This section requires if any order, regulation, or policy of the Industrial Commission necessary to implement the provision of Chapter 38-08 has an estimated fiscal effect on the state in excess of $20 million in a biennium, the Industrial Commission will provide a report to the Budget Section regarding the fiscal impact on state revenues and expenditures, including any effect on the funds of the Industrial Commission.

12. **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 $135,000 is estimated to be available in the fund as of June 30, 2017).

13. **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.

14. **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.

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

16. **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.

17. **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.

18. **Requests by ITD 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.

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

21. **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 2017-19 biennium appropriation (Section 3 of House Bill No. 1020 (2017))** - This section 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 2017-19 biennium appropriations. This requirement also was established in Section 5 of Senate Bill No. 2020 (2015).

22. **State Water Commission project funding designations (Section 5 of House Bill No. 1020 (2017))** - This section identifies specific purposes for the funding provided in the water and atmospheric resources line item in Section 1 of House Bill No. 1020. Budget Section approval is required for any transfers between these designated purposes proposed by the State Water Commission.

23. **Red River Valley Water Supply Project funding designations (Section 7 of House Bill No. 1020 (2017))** - This section requires Budget Section approval to allow the Garrison Diversion Conservancy District to change funding between designations for the Red River Valley Water Supply Project.

24. **Red River Valley Water Supply Project certifications (Section 8 of House Bill No. 1020 (2017))** - This section requires that the Budget Section receive and approve certification from the State Water Commission and the State Engineer that all items listed in subsection 1 of Section 8 of House Bill No. 1020 related to the Red River Valley Water Supply Project have been accomplished.

25. **Western Area Water Supply Authority loan payment (Section 10 of House Bill No. 1020 (2017))** - This section requires the State Water Commission to obtain Budget Section approval for a payment of a Western Area Water Supply Authority defaulted consolidation loan payment.

26. **SIRN loan approval (Section 7 of House Bill No. 1178 (2017))** - This section requires ITD to obtain Budget Section approval for a loan for the expenses of SIRN.

27. **SBHE tuition increases (Section 27 of Senate Bill No. 2003 (2017))** - This section requires SBHE to obtain Budget Section approval of any tuition rate increases of more than 4 percent for the 2017-18 or 2018-19 academic years.

28. **Department of Trust Lands information technology project (Section 12 of Senate Bill No. 2013 (2017))** - This section requires that of the $3.6 million appropriated from the state lands maintenance fund to the Department of Trust Lands for an information technology project, the department must receive Budget Section approval prior to spending $1.8 million for the project.

29. **Federal block grant hearings (Senate Concurrent Resolution No. 4001 (2017))** - This resolution authorizes the Budget Section, through September 30, 2019, to hold any required legislative hearings for federal block grants.

OFFICE OF MANAGEMENT AND BUDGET

2015-17 Biennium General Fund Revenues and Expenditures

The Budget Section received a report from OMB on the final status of the general fund for the 2015-17 biennium:

Unobligated general fund balance - July 1, 2015		$729,529,389
Balance obligated for authorized carryover from the 2013-15 biennium		147,653,143
Total beginning general fund balance - July 1, 2015		$877,182,532
Add		
General fund collections		4,121,719,959
Total revenue available		$4,998,902,491
Less		
Legislative appropriations	($6,026,158,028)	
Contingent appropriation - Department of Transportation	(20,000,000)	
4.05% allotment (executive branch only)	239,120,391	
4.05% allotment (legislative branch and Supreme Court)	5,749,197	
2.5% allotment (all branches)	151,154,064	
Restore funding for Department of Human Services and Department of Corrections and Rehabilitation	(36,535,880)	
Authorized carryover from previous biennium	(147,653,143)	
2015-17 biennium authority used in 2013-15 biennium pursuant to emergency clause	9,858,196	
Supplemental appropriations authorized by 2017 Legislative Assembly	(617,010)	
Total appropriations		(5,825,082,213)
Unspent appropriation authority (turnback)		97,846,781
Estimated ending general fund balance - June 30, 2015 - Before transfers		($728,332,941)
Transfer from budget stabilization fund	$572,485,454	
Transfer from Bank of North Dakota	100,000,000	
Transfer from strategic investment and improvements fund	155,000,000	
Transfer to budget stabilization fund	(32,202,755)	
Net effect of other transfers, adjustments, and cash certifications	(1,949,758)	
Total transfers and adjustments		793,332,941
Ending general fund balance - June 30, 2017		$65,000,000

2015-17 Biennium General Fund Turnback

The Budget Section received a report from OMB on the 2015-17 biennium agency unspent general fund appropriation amounts (turnback). Unspent 2015-17 biennium general fund appropriation authority (turnback) totaled approximately $97.8 million. The Department of Public Instruction had turnback of $37.1 million, which was a result of reduced state school aid spending due to lower than anticipated enrollment growth, and DHS had turnback of $27.3 million, which related primarily to Medicaid and salaries and wages savings.

2015-17 Biennium Capital Construction Carryover

The Budget Section received a report from OMB on 2015-17 biennium capital construction carryover. The Office of Management and Budget reported funding of $89.5 million for the 2015-17 biennium was continued into the 2017-19 biennium. The Office of Management and Budget reported of the $89.5 million, approximately $7.2 million is from the general fund.

2017-19 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 2017-19 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections through August 2018, and reflecting the 2017 legislative forecast for the remainder of the 2017-19 biennium:

Unobligated general fund balance - July 1, 2017		$65,000,000
Balance obligated for authorized carryover from the 2015-17 biennium		99,271,093
Total beginning general fund balance - July 1, 2017		$164,271,093
Add		
General fund collections through August 2018	$2,834,496,132	
Forecast general fund revenue for the remainder of the 2017-19 biennium	1,600,526,932	
Total revenues		4,435,023,064
Total available		$4,599,294,157
Less		
Legislative appropriations - One-time	($14,638,226)	
Legislative appropriations - Ongoing	(4,295,624,415)	
Authorized carryover from the 2015-17 biennium	(99,271,093)	
Total appropriations		(4,409,533,734)
Less anticipated deficiency requests:		
Adjutant General	($15,500,802)	
State Historical Society	(280,000)	
Office of Management and Budget	(408,000)	
Total anticipated deficiency requests		(16,188,802)
Add anticipated turnback:		
Governor's office	$265,928	
Department of Public Instruction - State school aid	11,300,000	
Total anticipated turnback		11,565,928
Estimated ending general fund balance - June 30, 2019		$185,137,549[1]

[1]Pursuant to Chapter 54-27.2, any end-of-biennium balance in excess of $65 million is transferred to the budget stabilization fund, up to a maximum of 15 percent of general fund appropriations.

The Budget Section was informed as of August 2018, the balance in the budget stabilization fund was $113.3 million, the balance in the legacy fund was $5.7 billion, the balance in the foundation aid stabilization fund was $480.6 million, the balance in the tax relief fund was $200.0 million, and the balance in the strategic investment and improvements fund was $325.8 million.

2017-19 Biennium Actual and Revised Revenues

The Budget Section received OMB's September 2018 revised 2017-19 biennium general fund revenue forecast. The revised revenue forecast includes an increase of $136.5 million of general fund revenue compared to the 2017 legislative forecast for the 2017-19 biennium. The following is a summary of the revised revenue forecast:

Tax Type	2017 Legislative Forecast	September 2018 Revised Revenue Forecast	Amount of Increase (Decrease) from Legislative Forecast	Percentage Increase (Decrease) from Legislative Forecast
Sales and use taxes	$1,701,747,285	$1,722,635,206	$20,887,921	1.2%
Motor vehicle excise tax	220,003,000	231,144,237	11,141,237	5.1%
Individual income tax	698,728,000	757,683,125	58,955,125	8.4%
Corporate income tax	102,088,415	164,894,170	62,805,755	61.5%
Insurance premium tax	129,637,121	109,325,897	(20,311,224)	(15.7%)
Gaming tax	7,301,480	6,528,321	(773,159)	(10.6%)
Cigarette and tobacco tax	53,247,000	52,054,548	(1,192,452)	(2.2%)
Wholesale liquor tax	18,083,000	17,877,575	(205,425)	(1.1%)
Coal conversion tax	39,564,000	41,937,227	2,373,227	6.0%
Mineral leasing fees	30,500,000	31,930,066	1,430,066	4.7%

Tax Type	2017 Legislative Forecast	September 2018 Revised Revenue Forecast	Amount of Increase (Decrease) from Legislative Forecast	Percentage Increase (Decrease) from Legislative Forecast
Departmental collections	81,983,864	83,429,678	1,445,814	1.8%
Interest income	8,000,000	7,944,850	(55,150)	(0.7%)
Total revenues	$3,090,883,165	$3,227,384,900	$136,501,735	4.4%

2017-19 Oil Tax Revenue Allocations

The Budget Section received OMB's revised 2017-19 biennium oil tax revenue forecast in September 2018. The revised estimated oil tax revenue will be $1.5 billion more than the 2017 legislative forecast. The revised forecast estimates an average North Dakota price of $58 per barrel of oil compared to $47 in the 2017 legislative forecast and production ending at 1.23 million barrels per day compared to 950,000 barrels per day during the 2nd year of the biennium in the legislative forecast. The following is a summary of the revised revenue forecast for 2017-19 biennium oil tax revenue allocations:

Allocation	2017 Legislative Forecast	September 2018 Revised Revenue Forecast	Revised Forecast Increase (Decrease) to Original Forecast	Percentage Increase (Decrease)
Political subdivisions	$499,644,769	$666,578,370	$166,933,601	33.4%
Three Affiliated Tribes	233,972,756	440,328,146	206,355,389	88.2%
Legacy fund	865,827,862	1,243,174,990	377,347,128	43.6%
Foundation aid stabilization fund	130,926,961	179,803,662	48,876,701	37.3%
Common schools trust fund	130,926,961	179,803,662	48,876,701	37.3%
Resources trust fund	258,653,919	356,407,324	97,753,405	37.8%
Renewable energy development fund	3,000,000	3,000,000	0	0.0%
Energy conservation grant fund	200,000	200,000	0	0.0%
Oil and gas research fund	10,000,000	10,000,000	0	0.0%
Oil and gas impact fund	29,145,670	28,353,446	(792,224)	(2.7%)
North Dakota outdoor heritage fund	10,871,198	10,799,177	(72,021)	(0.7%)
Abandoned well and site reclamation fund	8,435,599	8,399,588	(36,010)	(0.4%)
General fund	400,000,000	400,000,000	0	0.0%
Tax relief fund	200,000,000	200,000,000	0	0.0%
Budget stabilization fund	75,000,000	75,000,000	0	0.0%
State disaster relief fund	0	0	0	0.0%
Energy impact fund	4,000,000	4,000,000	0	0.0%
Lignite research fund	3,000,000	3,000,000	0	0.0%
Strategic investment and improvements fund	256,459,929	775,396,416	518,936,487	202.3%
Total revenues	$3,120,065,624	$4,584,244,781	$1,464,179,157	46.9%

Preliminary 2019-21 Revenue Forecast

The Budget Section received the OMB preliminary revenue forecast for the 2019-21 biennium. The preliminary 2019-21 biennium revenue forecast includes estimated general fund revenue of $3.4 billion for the 2019-21 biennium, $156.4 million more than the 2017-19 biennium revised forecast and $292.9 million more than the 2017 legislative forecast for the 2017-19 biennium.

The preliminary 2019-21 biennium revenue forecast prepared by OMB includes estimated oil tax revenue of $4.8 billion, $245.3 million more than the 2017-19 biennium revised forecast and $1.7 billion more than the 2017 legislative forecast. The preliminary 2019-21 biennium revenue forecast estimates an average North Dakota oil price of $53 per barrel and production of 1.31 million barrels per day.

Employee Bonuses

The Office of Management and Budget reported to the Budget Section in September 2017 and September 2018 regarding the number of employees receiving bonuses exceeding the 25 percent limitation pursuant to Section 54-06-30. Agencies may not give bonuses to more than 25 percent of their employees except in special circumstances approved by Human Resource Management Services, and Human Resource Management Services is required to report exceptions to the Budget Section. In September 2017, OMB reported no agencies made requests or exceeded the 25 percent limitation during fiscal year 2017. In September 2018, OMB reported during fiscal year 2018, 21 state agencies awarded 257 performance bonuses to employees, totaling $236,941. Of the 21 state agencies, the North Dakota School for the Blind and the Insurance Commissioner exceeded the 25 percent employee bonus limitation.

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	Description	Amount
Adjutant General	Voluntary separation incentive program	$19,013
Attorney General	Additional duties assumed by one individual	$1,415
Attorney General	Voluntary separation incentive program	$208,406
Department of Commerce	Workload adjustment for one individual	$553
Department of Commerce	Severance payments for a reduction-in-force for 13 individuals	$190,722
Department of Corrections and Rehabilitation	Voluntary separation incentive program	$16,171
Department of Corrections and Rehabilitation	Additional duties performed by two individuals related to the special operations response team from May to August 2017 ($150 per person per month)	$1,200
Department of Corrections and Rehabilitation	Compensation for additional workload for two individuals	$1,560
Department of Corrections and Rehabilitation	Stipends provided for teacher licenses for three individuals	$2,400
Council on the Arts	Additional duties assumed by three individuals related to various grant reporting from July 2016 to June 2017	$19,200
Council on the Arts	Overspent salaries and wages line item in 2015-17 biennium. Overage will be charged to the 2017-19 biennium appropriation.	$2,645
Department of Financial Institutions	Voluntary separation incentive program for two individuals	$44,937
Highway Patrol	Voluntary separation incentive program for three individuals	$44,455
Department of Human Services	Reduction in force of 1 individual	$9,592
Department of Human Services	Voluntary separation incentive program for 69 individuals	$1,198,172
Department of Human Services	Settlement agreement for two individuals	$17,392
Department of Human Services	Negotiated settlement agreement for one individual	$57,268
Indian Affairs Commission	Voluntary separation incentive program	$17,127
Judicial branch	Additional hours worked by one individual while coworker was on maternity leave	$705
North Dakota Vision Services - School for the Blind	Pay adjustment for seven teachers working additional days for summer contracts	$18,840
North Dakota Vision Services - School for the Blind	One teacher retired prior to 12-month contract concluding. Compensation for remaining 3 months of contract and 10 percent of sick leave	$10,946
Office of Management and Budget	Additional duties assumed by two individuals	$14,500
Office of Management and Budget	Voluntary separation incentive program	$111,505
Parks and Recreation Department	Additional duties assumed by one individual	$3,000
Parks and Recreation Department	Voluntary separation incentive program for two individuals	$44,911
Public Employees Retirement System	Compensation for additional workload for three individuals	$2,884
Retirement and Investment Office	Retroactive pay for two employees as a result of additional workload due to coworker maternity leave	$1,300
Retirement and Investment Office	Additional duties performed by six individuals due to a position vacancy	$6,575
Securities Department	Pay increase approved by the Governor on January 30, 2018, for work performed by one individual since July 1, 2017	$10,192
Soybean Council	Additional workload for one individual while in dual role of Executive Director and Director of Market Development	$10,000
State Auditor	Settlement agreements for two individuals	$36,555
State Auditor	Voluntary separation incentive program for one individual	$21,707
State Department of Health	Severance agreement for one individual	$26,652
State Department of Health	Voluntary separation incentive program for two individuals	$57,343
State Department of Health	Compensation awarded to one individual based on an Office of Administrative Hearings decision	$6,050
State Department of Health	Sick leave payout for one individual	$1,599
State Department of Health	Compensation for additional strategic and organizational responsibilities for two individuals	$1,382
State Water Commission	Voluntary separation incentive program for four individuals	$90,066

Agency	Description	Amount
Tobacco Prevention and Control Committee	Employee severance packages relating to elimination of agency	$400,739
Department of Trust Lands	Settlement agreement for one individual	$38,858
Department of Veterans' Affairs	Reduction in force of one individual	$10,719
Veterans' Home	Severance agreement for one individual	$45,000
Workforce Safety and Insurance	Compensation for additional workload for one individual	$1,356

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 2017-19 biennium to date through July 2018, approximately $53.1 million had been received by the state and deposited in the tobacco settlement trust fund. Payments received by the state and deposited in the tobacco settlement trust fund since December 1999 total $475.0 million. Of the $53.1 million, $29.1 million was transferred to the community health trust fund, $23.8 million was transferred to the water development trust fund, and $200,000 was appropriated by the 2017 Legislative Assembly to the Attorney General.

The Attorney General reported to the Budget Section in July 2018 regarding recent tobacco settlement payments received from tobacco companies. The Attorney General reported tobacco companies participating in the Master Settlement Agreement previously claimed North Dakota did not appropriately enforce the requirement of nonparticipating tobacco companies to deposit settlement claims into an escrow account. The Attorney General reported this resulted in the participating tobacco companies withholding payment from North Dakota. The Budget Section was informed North Dakota reached a settlement with the tobacco companies, resulting in $34 million being paid to North Dakota to settle all existing tobacco-related claims. The Attorney General reported the $34 million settlement was received in April 2018 as part of the $53.1 million payments.

Prior to the 2017-19 biennium, tobacco settlement funds were distributed as follows--10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. The tobacco settlement payments during the 2017-19 biennium are distributed 55 percent to the community health trust fund, 0 percent to the common schools trust fund, and 45 percent to the water development trust fund. At the conclusion of the current biennium, the allocation percentages will revert to the percentage format established prior to the 2017-19 biennium.

Voluntary Separation Incentive Program

The Office of Management and Budget reported to the Budget Section in June 2017 regarding the status of the 2017 voluntary separation incentive program. The Office of Management and Budget reported 17 agencies offered the program, resulting in 200 employee applications for the program, of which 158 applications were accepted. The Office of Management and Budget reported the estimated cost of the 158 agreements was $3 million.

The Office of Management and Budget reported to the Budget Section in September 2018 regarding the status of the 2018 voluntary separation incentive program. The Office of Management and Budget reported 19 agencies offered the program, resulting in 295 employee applications for the program, of which 40 applications had been accepted. After the Budget Section concluded its business, OMB accepted an additional 179 applications, resulting in a total of 219 accepted applications.

Deficiency Appropriations

The Office of Management and Budget reported to the Budget Section in September 2018 regarding anticipated deficiency appropriations for the 2017-19 biennium. The Office of Management and Budget reported three agencies anticipate requesting deficiency appropriations totaling $16.2 million from the 2019 Legislative Assembly. The Office of Management and Budget anticipates requesting $408,000 for expenditures related to the Heritage Center expansion project lawsuit; the Adjutant General anticipates requesting $15.5 million for 2017 flood disaster costs ($1.2 million), to repay a loan for costs relating to the unlawful activity associated with the construction of the Dakota Access Pipeline ($12.8 million), and to repay a loan for the 2017 emergency hay transportation program ($1.5 million); and the State Historical Society anticipates requesting a deficiency appropriation of $280,000 for legal expenditures related to the Heritage Center expansion project lawsuit.

EXECUTIVE BUDGET DEVELOPMENT

The Budget Section received reports from OMB regarding the development of the 2019-21 biennium executive budget. The anticipated budget participation activities and timeline are as follows:

Executive Budget Development Activities	Time Period
Budget request guidelines for state agencies	April through May 2018
Preliminary revenue forecast	July through August 2018
Budget requests due from state agencies	July 15, 2018
Budget meetings with state agencies	August through mid-October 2018
Executive revenue forecast is prepared	November 2018
Budget recommendation presented to the Legislative Assembly	Early December 2018

The Budget Section was informed the Governor directed agencies to develop 2019-21 biennium budget requests as follows:

Criteria	Governor's 2019-21 Biennium Budget Guidelines
2017-19 biennium general fund appropriation of $5 million or more	10 percent reduction to 2017-19 ongoing expenditures
2017-19 biennium general fund appropriation of less than $5 million	5 percent reduction to 2017-19 ongoing expenditures
FTE positions authorized for the 2017-19 biennium of 20 or more	Reduction of 5 percent of 2017-19 authorized FTE positions
FTE positions authorized for the 2017-19 biennium of fewer than 20	No reduction of FTE positions

The Governor also directed agencies to prepare an additional 3 percent contingent reduction to ongoing funding.

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 SBHE, which 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 2017		
Attorney General	2 years	$496,626
Department of Human Services	2 years, 5 months	$4,000,000
September 2017		
Attorney General	August 2016 through December 2017	$13,850,000
Department of Transportation	January 2018 through January 2021	$1,584,000
December 2017		
Department of Transportation	2017 through 2025	$25,000,000
Department of Transportation	2017 through 2025	$25,000,000
Department of Transportation	2017 through 2021	$30,000,000
March 2018		
Department of Public Instruction	October 2018 through September 2019	$1,000,000
State Historical Society	May 2018 through April 2019	$50,000
Department of Transportation	January 2018 through June 2021	$376,534
Department of Transportation	February 2018 through July 2020	$241,687
July 2018		
Department of Public Instruction	2018 through 2022	$3,700,000
Department of Public Instruction	September 2018 through September 2020	$100,000
Department of Agriculture	October 2018 through September 2020	$300,000
September 2018		
Department of Agriculture	May 2019 through April 2020	$45,000

The Office of Management and Budget reported the following agencies were awarded federal grants of $25,000 or more:

Agency	Time Period of Grant	Amount
September 2017		
Attorney General	August 2016 through December 2017	$10,000,000
December 2017		
Department of Public Instruction	October 2017 through September 2020	$28,800,000
July 2018		
State Library	July 2018 through June 2020	$249,000
Housing Finance Agency	November 2017 through November 2020	$265,000
September 2018		
Job Service North Dakota	July 2018 through June 2021	$450,000

State Board of Higher Education Project Variance Reports

The Office of Management and Budget reported to the Budget Section regarding capital project variance reports provided from SBHE to OMB 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 SBHE, the board 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 March 2018, OMB reported project variance reports for University System projects for the period July 2017 through December 2017, as follows:

	Number of Projects	Project Authorization	Current Contract Amounts	Contract (Over)/Under Authorization
Projects Specifically Authorized by the Legislative Assembly				
Lake Region State College	1	$1,400,000	$1,400,000	$0
UND	19	$265,488,396	$150,260,912	$114,339,984
NDSU	6	$152,142,709	$115,902,253	$36,240,456
NDSU Extension Services	3	$22,408,224	$13,141,463	$6,979,218
North Dakota State College of Science	1	$13,298,000	$12,951,387	$346,613
Dickinson State University	5	$18,059,974	$3,152,110	$14,907,864
Minot State University	9	$5,191,606	$4,016,599	$1,175,007
Valley City State University	2	$36,431,775	$13,931,775	$22,500,000
Dakota College at Bottineau	3	$11,702,482	$1,048,564	$10,653,918
Projects Approved by the State Board of Higher Education				
Lake Region State College	2	$463,474	$355,334	$108,140
UND	8	$12,654,628	$7,068,759	$8,585,869
NDSU	14	$24,036,000	$17,948,329	$6,087,671
Dickinson State University	1	$7,966,350	$7,966,350	$0
Mayville State University	1	$777,000	$730,743	$46,257
Valley City State University	1	$439,199	$404,291	$34,908

GOVERNOR'S OFFICE

Additional Federal or Other Funds Received

The Governor's office reported to the Budget Section in March 2018 on the source, amount, and purpose of additional federal or other funds received during the 2017-19 biennium pursuant to Section 4 of House Bill No. 1001 (2017). The report indicated the following additional funds were received by the Governor's office as of March 2018:

Source	Amount	Purpose
Bush Foundation	$50,000	Innovation Education Task Force
Governor Burgum 2015-17 salary	$51,525	Office of Recovery Reinvented
Dakota Medical Foundation	$30,000	Office of Recovery Reinvented
North Dakota United	$1,624	Task Force for Higher Education Governance
North Dakota University System Foundation	$500	Task Force for Higher Education Governance

NORTH DAKOTA UNIVERSITY SYSTEM

Campus Improvements

The University System requested Budget Section approval relating to the following capital construction project requests for campus improvements:

Minot State University

- **Dome seat replacement project** - Pursuant to Section 15-10-12.1, the Budget Section approved a $2.2 million dome seat replacement project for the Minot State University Dome. The Budget Section was informed of the $2.2 million needed to replace the dome's 10,000 seats, $1.0 million was provided in August 2017 from the City of Minot from the city's facilities enhancement fund. The remaining $1.2 million will be provided by donations to

the Minot State University Development Foundation, of which approximately one-third is anticipated to be provided by individuals and two-thirds by business sponsors. Construction will begin in May 2019 and will be competed in the summer of 2019 to be available for use during the 2020 academic year.

Valley City State University

- **Track repair project** - Pursuant to Section 15-10-12.1, the Budget Section approved a $1.2 million track repair project for the Valley City State University outdoor track field, using donated funds. The Budget Section was informed excess water and freezing conditions have damaged the track, causing the surface to be unsafe. The project was to begin in the spring of 2018 and be completed prior to the start of the fall 2018 athletic season.

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 control of SBHE. The report indicated one project, the seed conditioning plants at the NDSU Extension Service, was authorized during the 2015-17 biennium and was continued into the 2017-19 biennium. The expected completion date for this project is June 2019.

VALLEY CITY STATE UNIVERSITY

Integrated Carbon Plant Project

Valley City State University reported to the Budget Section regarding the status of the integrated carbon plant project pursuant to Section 3 of Senate Bill No. 2196 (2017). Valley City State University reported the project has potential to generate new revenue for Valley City State University, allow for a decrease in utility expenditures, and create student research and teaching opportunities while lowering the university's carbon emissions. The 2017 Legislative Assembly authorized the university to proceed with the project by using revenue bonds of up to $22.5 million. Valley City State University is working to secure bond financing and has contracted with Barr Engineering to conduct an independent feasibility study and market analysis. The study is expected to be complete in fall 2018. Valley City State University informed the Budget Section if the study results reveal the technology and financial potential of the project can be obtained, bond sales would be completed in approximately 2 to 3 months and the plant would require 18 to 24 months to construct.

ANNUAL FULL-TIME EQUIVALENT POSITION REPORT

North Dakota State University Main Research Center

The North Dakota State University Main Research Center reported to the Budget Section regarding FTE position adjustments made at the main research center pursuant to Section 15-12.1-05. The main research center reduced 28.78 FTE positions between December 1, 2016, and November 30, 2017, resulting in a total of 332.82 FTE positions as of November 30, 2017.

Branch Research Centers and Agronomy Seed Farm

The North Dakota State University branch research centers and Agronomy Seed Farm reported to the Budget Section regarding FTE position adjustments made at the main research center pursuant to Section 15-12.1-05. The branch research centers reduced 9.80 FTE positions between December 1, 2016, and November 30, 2017, resulting in a total of 108.89 FTE positions as of November 30, 2017. The Agronomy Seed Farm reported no changes in FTE positions were made between December 1, 2016, and November 30, 2017, maintaining a total of 3.00 FTE positions as of November 30, 2017.

North Dakota State University Extension Service

The North Dakota State University Extension Service reported to the Budget Section regarding the FTE position adjustments made at the Extension Service pursuant to Section 11-38-12. The Extension Service reduced 13.97 FTE positions between December 1, 2016, and November 30, 2017, resulting in a total of 251.90 FTE positions as of November 30, 2017.

Northern Crops Institute

The Northern Crops Institute reported to the Budget Section regarding the FTE position adjustments made at the Northern Crops Institute pursuant to Section 11-38-12. The Northern Crops Institute reported no changes in FTE positions were made between December 1, 2016, and November 30, 2017, maintaining a total of 11.80 FTE positions as of November 30, 2017.

Upper Great Plains Transportation Institute

The Upper Great Plains Transportation Institute reported to the Budget Section regarding the FTE position adjustments made for the Upper Great Plains Transportation Institute pursuant to Section 11-38-12. The Budget Section learned the Upper Great Plains Transportation Institute added .05 FTE positions between December 1, 2016, and November 30, 2017, resulting in a total of 43.93 FTE positions as of November 30, 2017.

STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION

Efficiency and Effectiveness

The Budget Section received a report from the State Board of Agricultural Research and Education in March 2018 regarding its findings and recommendations to increase the efficiency and effectiveness of the NDSU Extension Service pursuant to Section 15 of Senate Bill No. 2020 (2017). The board reported Phase 1 of the review process was completed in June 2017 and Phase 2 was completed in November 2017. The Budget Section was informed a review committee focused on organized citizen input, educational programs, organizational structure, funding, the changing needs of customers, branding, public relations, and marketing. The committee recommended the NDSU Extension Service obtain input from stakeholders and citizens regarding organization, the focus on transformational education, delivery of programs in agriculture and natural resources, 4-H and youth development, family and consumer sciences, and community vitality. The committee recommended the Extension Service:

- Clarify the role of county, area, and state specialists and to be more deliberate in staffing plans with campus-based departments to ensure expertise is available for stakeholders;
- Focus on engaging the 18- to 35-year-old and 36- to 49-year-old demographics, as these demographics are vital to the future of the Extension Service;
- Update the financial partnership between county and state base policy to allow for increases in fees and grants for agency programs. The cost-share for salary and benefits would be 40 percent county responsibility and 60 percent state responsibility; and
- Change its name to NDSU Extension as part of a rebranding and marketing effort and to avoid confusion with service providing agencies.

Status Report

The State Board of Agricultural Research and Education submitted a report to the Budget Section in July 2018 regarding the status of board activities pursuant to Section 15-12.1-17(10).

DEPARTMENT OF AGRICULTURE

Emergency Hay Transportation Assistance Program

The Agriculture Commissioner reported to the Budget Section in December 2017 regarding the emergency hay transportation assistance program. The Agriculture Commissioner reported as a result of the 2017 drought and subsequent hay production shortages, producers needed to purchase and transport hay from outside North Dakota. The Agriculture Commissioner reported the emergency hay transportation assistance program was utilized to reimburse these producers. The Agriculture Commissioner reported the department received 492 applications for hay transportation assistance, of which 491 applications were approved. The Agriculture Commissioner reported hay transportation costs ranged from $4 to $5 per mile, with an average of $4.24 per mile. The Agriculture Commissioner received $1.5 million from the Adjutant General from a Bank of North Dakota loan for the program. The Agriculture Commissioner reported the entire $1.5 million distributed to successful applicants, resulting in an average amount awarded to each applicant of $3,054.

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 $57.8 million of state centers of excellence funds and $221.8 million in nonstate funds have generated a total estimated economic impact of $833.1 million. The department 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. In fiscal year 2016, 36 centers had been in existence for at least 3 full fiscal years. Of these 36, 10 centers have been released from postaward monitoring, pursuant to Section 15-69-04. The department reported of the remaining 26 centers, 20 centers are achieving the desired economic benefit while 6 centers were not. The 6 centers include:

- NDSU - Center for Sensors, Communication, and Control (Center for Integrated Electronic Systems)--fewer jobs than anticipated;
- UND Research Foundation - Center for Passive Therapeutics--laboratories not fully utilized;
- UND SUNRISE BioProducts Center of Excellence for Chemicals, Polymers, and Composites from Crop Oils--unable to secure private sector funding;
- NDSU Center for Advanced Technology Development and Commercialization--unable to secure private sector partners;

- UND Center for Innovation V2 Aerospace Technical Assistance Enhancement grant--unable to secure federal maintenance contract for unmanned systems; and
- NDSU Center for Life Sciences Research and Applications--unable to secure private sector partners.

The Department of Commerce reported centers of excellence and centers of research excellence participants and the Centers of Excellence Commission audits include:

Center of Excellence and Center of Research Excellence	Audit Results
Lake Region State College - Dakota Precision Ag Center	No findings identified
Dakota College at Bottineau - Entrepreneurial Center for Horticulture	No findings identified
NDSU - Center for Advanced Electronics Design and Manufacturing	No findings identified
NDSU - Center for Surface Protection	No findings identified
NDSU - Center for Agbiotechnology: Oilseed Development	No findings identified
NDSU - Center for Technologically Innovative Products and Processes	No findings identified
NDSU - Center for Sensors, Communication, and Control (Center for Integrated Electronic Systems)	No findings identified
NDSU - Center for Advanced Technology Development and Commercialization	No findings identified
NDSU - Research 1 Expansion	No findings identified
NDSU - Center for Biobased Materials, Science and Technology	No findings identified
NDSU - Center for Life Sciences Research and Applications	No findings identified
NDSU - Limited Deployment Cooperative Airspace Project	No findings identified
UND - Limited Deployment Cooperative Airspace Project	No findings identified
UND - Center for Gas Utilization	Two findings identified
UND - Unmanned Aircraft Systems Center of Excellence	No findings identified
UND Research Foundation - Center for Passive Therapeutics	No findings identified
UND - Petroleum Research, Education, and Entrepreneurship Center	Three findings identified
UND - SUNRISE BioProducts Center of Excellence for Chemicals, Polymers, and Composites from Crop Oils	No findings identified
UND - Unmanned Aircraft Systems Software Curriculum and Development	No findings identified
UND - Unmanned Aircraft Systems Research, Education, and Training Enhancement Grant	No findings identified
UND - Law Enforcement and Public Safety Agency Small Unmanned Aircraft Systems Course	No findings identified
UND Center for Innovation Foundation - V2 Aerospace, Inc., Technical Assistance Request	No findings identified
UND Center for Innovation - Certificate Programs for Motion Video and Activity-Based Intelligence Analysis	No findings identified
UND - Center for Avian Therapeutics for Infectious Diseases	No findings identified
UND - Global Hawk Sensor Operator Part Task Trainer	No findings identified
UND Center for Innovation Foundation - Joint Distributed Common Ground System	No findings identified
UND - Unmanned Aircraft Systems Airspace Initiative Center of Excellence (Phases 2 and 3)	No findings identified
UND - Airspace Integration Team - Unmanned Aircraft Systems National Test Site (Phase I, II, III)	No findings identified
UND Certified Flight Instructor - Enhanced Use Lease for Grand Forks Air Base III	No findings identified
UND Certified Flight Instructor - Enhanced Use Lease for Grand Forks Air Base IV	No findings identified
Bismarck State College - National Energy Center of Excellence	No longer reporting
Dickinson State University Strom Center for Entrepreneurship and Innovation - Institute for Technology and Business	No longer reporting
NDSU - Center for Biopharmaceutical Research and Production	No longer reporting
NDSU - Material and Nanotechnology Center	No longer reporting
UND - Center of Excellence in Space Technology and Operations	No longer reporting
UND Energy and Environmental Research Center - National Center for Hydrogen Technology	No longer reporting
UND - Grand Forks Air Force Base Realignment Business Transition	No longer reporting
UND Research Foundation - Center of Excellence in Life Sciences and Advanced Technology	No longer reporting
UND - Unmanned Aircraft Systems Airspace Initiative Center of Excellence (Phase 1)	No longer reporting
Valley City State University - Enterprise University	No longer reporting
Williston State College - Petroleum Safety and Technology Center	No longer reporting

Renaissance Fund Organizations Annual Audits

The Department of Commerce reported on the annual audits of renaissance fund organizations (RFOs) pursuant to Section 40-63-07(9). The department reported 58 cities have a renaissance zone, 8 of which have established RFOs. The department reported approximately $11.3 million has been invested in RFOs and $5.6 million of tax credits have been claimed. The department reported of the $4.9 million remaining tax credits available as of September 2018, $1.2 million has been reserved for the Grand Forks RFO, $2 million for the Fargo RFO, $465,000 for the Hope RFO, and $15,000 for the Mayville RFO.

The department reported the following tax credit summary as of September 2018:

Renaissance Tax Credits	Total Credits Authorized	Total Credits Claimed	Total Credits Available	
			Committed	Uncommitted
Category 1 (0 to 5,000 population)	$2,135,866	$563,366[1]	$480,000	$1,092,500
Category 2 (5,001 to 30,000 population)	250,000	250,000[2]		
Category 3 (Over 30,000 population)	8,114,134	4,835,000[3]	3,200,000	79,134
Total	$10,500,000	$5,648,366	$3,680,000	$1,171,634

[1]Category 1 cities - Casselton ($37,500), Hazen ($15,500), Mayville ($187,650), and Hope ($322,716).

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

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

Reduction in Force

The Department of Commerce reported on the department's May 2018 reduction in force, including the amount of salary savings and how the savings will be used during the 2017-19 and 2019-21 bienniums. According to the report, on May 24, 2018, the department reduced staff by 13 FTE positions. The department intends to use cost-savings from the reduction in force to hire specialists in new roles to focus on new department priorities, including the commercialization of intellectual property, the establishment of an intermodal site in North Dakota, and elevating North Dakota's image and brand.

The department reported while the Governor's guidelines would reduce the department's FTE positions to 63.40 for the 2019-21 biennium, the department will request 61.80 FTE positions, a reduction of 4.60 FTE positions from the 66.40 FTE positions authorized for the 2017-19 biennium. The department estimates the reduction in force will result in cost-savings of $218,705 during the 2017-19 biennium. The estimated cost-savings during the 2019-21 biennium is $266,497, which includes salaries and benefits savings and reduced rent costs because the department will reduce the amount of office space it rents from Workforce Safety and Insurance.

FORM OF BUDGET

State Water Commission

Pursuant to Section 54-44.1-07, the Budget Section considered the form of the State Water Commission budget documents and appropriations bill for presentation to the 2019 Legislative Assembly. The State Water Commission's current budget consists of two line items, totaling $722.2 million for the 2017-19 biennium. Section 5 of House Bill No. 1020 (2017) provided direction to the State Water Commission and OMB on the form of the State Water Commission budget; however, Governor Burgum vetoed this section. Under Section 54-44.1-07, the Legislative Council has authority to determine how agencies and OMB submit budgets and budget recommendations to the Legislative Assembly for an upcoming biennium. The Budget Section directed pursuant to Section 54-44.1-07:

- The 2019-21 biennium budget request for the State Water Commission and the related draft appropriations act for the State Water Commission submitted by OMB for consideration by the 66th Legislative Assembly identify funding separately in a salaries and wages line item, operating expenses line item, capital assets line item, project carryover line item, new projects line item, and any additional line items as determined necessary by the commission or OMB; and
- The State Water Commission present funding requests for projects for the 2019-21 biennium in a manner consistent with the funding designations identified in Section 5 of House Bill No. 1020.

STATE TREASURER

Outstanding Warrants and Checks

The Budget Section received reports from the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than 3 years pursuant to Section 54-11-01. Section 54-11-01 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 3 years. The State Treasurer provided reports to the Budget Section in September 2017 and September 2018. The Budget Section was informed items reported may be the result of money that has not been received by the proper recipient or checks that have not been cashed. Annually, checks more than 3 years old are transferred to the Department of Trust Lands as unclaimed property.

The State Treasurer reported in September 2017 the total number of outstanding checks in state fiscal year 2017 increased by 7.5 percent compared to state fiscal year 2016, while the total dollar amount of outstanding checks decreased by 8.5 percent during this time period. The State Treasurer reported the total amount of outstanding checks for fiscal year 2017 was $2.4 million. The State Treasurer reported 3,476 outstanding checks from fiscal year 2014 totaling $337,657 would be transferred to the Department of Trust Lands' Unclaimed Property Division in October 2017.

The State Treasurer reported in September 2018 the total dollar amount of outstanding checks increased by 9.8 percent from fiscal year 2017 to fiscal year 2018. The State Treasurer reported 4,293 checks totaling $409,647 issued in fiscal year 2015 will be transferred to Unclaimed Property in October 2018. As of September 2018, there were 18,114 outstanding checks totaling $5.2 million issued during fiscal years 2016, 2017, and 2018.

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 North Dakota Uniform Unclaimed Property Act has been in effect since 1975, and since that time, North Dakota state agencies have been reported as being owners of unclaimed property. The 2003 Legislative Assembly enacted Section 47-30.1-24.1 in an effort to resolve the issue of state agency unclaimed property. Section 47-30.1-24.1 provides that within 1 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 1 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 2017-18 interim, its Unclaimed Property Division identified 10 state agencies with unclaimed properties with a total value of $12,335 as of June 2017, and 13 state agencies with unclaimed properties with a total value of $17,216 as of June 2018.

The Budget Section, pursuant to Section 47-30.1-24.1, approved the lists of state agencies relinquishing rights to recover unclaimed property in June 2017 and in July 2018.

Status of Information Technology Project

The Budget Section received a report from the Department of Trust Lands in March 2018 regarding the status of the information technology (IT) project authorized in Senate Bill No. 2013 (2017), including current and anticipated expenditures for the 2017-19 biennium. The department reported as of March 19, 2018, the department has not expended the $3.6 million appropriation to replace the current department IT systems. The department reported a contract is expected to be executed by May 15, 2018, for unclaimed property replacement software. The Budget Section was informed due to insufficient responses for the department's land management system request for proposal, the request for proposal will be reissued on April 30, 2018.

BUDGET SECTION DUTIES - EFFECT OF SUPREME COURT DECISION

The Legislative Council Director reported to the Budget Section in September 2018 regarding the potential effect of the North Dakota Supreme Court decision in *North Dakota Legislative Assembly v. Burgum* on the duties of the Budget Section. The Legislative Council Director reported the court held the language in Section 5 of House Bill No. 1020 (2017) requiring Budget Section approval relating to State Water Commission funding transfers was an unconstitutional delegation of legislative authority. The ruling eliminates the State Water Commission's authority to transfer funds as designated in Section 5 and eliminates the authority of the Budget Section to approve these transfers. The Legislative Council Director reported the court held the language in Section 5 of Senate Bill No. 2013 (2017) requiring Budget Section approval relating to Department of Trust Lands appropriations also was an unconstitutional delegation of legislative authority. As a result, the ruling allows the Department of Trust Lands to spend the entire $3.6 million appropriation for its IT project without approval from the Budget Section.

The report indicated the court's opinion did not address other Budget Section duties, and the impact of the opinion on future Budget Section operations is unclear. The Legislative Council Director reported the court appeared to indicate the delegation of legislative functions to the Budget Section would be permissible if appropriate guidelines for Budget Section decisionmaking are provided. The Legislative Council Director reported it appears the court's decision will permit delegations of legislative powers with proper guidelines, but it will be important for the Legislative Assembly to avoid delegating to the Budget Section any function that would be considered an executive branch function.

HIGHWAY PATROL

Purchase of Unmanned Aircraft Systems

Pursuant to Section 54-06-37, the Budget Section reviewed a request from the Highway Patrol regarding the purchase of drones for crash reconstruction and search and rescue purposes. Section 54-06-37 requires state agencies or other state government entities, excluding the Adjutant General and UND School of Aviation, to receive approval from the Legislative Assembly, or the Budget Section if the Legislative Assembly is not in session, to purchase or lease an aircraft. A drone is considered an unmanned aircraft for purposes of this section.

The Highway Patrol reported the estimated cost of the drones and related equipment is approximately $45,000 and the Highway Patrol had budget savings accumulated to purchase the drones. The Budget Section reviewed its authority to consider the request due to the Supreme Court's decision in *North Dakota Legislative Assembly v. Burgum*. The Legislative Council Director reported because the Highway Patrol, one of the Governor's cabinet agencies, has submitted this request for Budget Section approval, it appears the Governor's office has reviewed the Supreme Court decision and determined it is appropriate for the Budget Section to consider this request. The Legislative Council Director reported the request could be considered an acceptance or acknowledgment by the Governor of the authority of the Legislative Assembly to statutorily delegate this type of approval authority to the Budget Section. The request was not approved by the Budget Section.

GAME AND FISH DEPARTMENT

Land Acquisition Requests

Pursuant to Section 20.1-02-05.1, the Budget Section reviewed a land acquisition request from the Game and Fish Department. The request related to a proposal to acquire 80 acres in Morton County adjacent to the department's Storm Creek Wildlife Management Area. The department reported the property was appraised at $138,000, or $1,725 per acre. The request was not approved by the Budget Section.

Wetlands Mitigation

The Game and Fish Department reported to the Budget Section in September 2018 regarding land acquisitions used for Department of Transportation (DOT) mitigation purposes and options to make more Game and Fish Department lands available for this purpose. The Game and Fish Department reported an interagency guidance document was implemented in 2010 to provide a set of procedures to assist agencies in mitigating unavoidable wetland losses. The Game and Fish Department controls and manages wildlife management areas (WMAs). The Game and Fish Department reported WMAs consist of lands either owned or leased and operated by the Game and Fish Department, totaling approximately 219,000 acres. The Game and Fish Department reported because the development of wildlife habitat, including wetlands, on WMAs is a primary function of the Game and Fish Department, almost all available wetland restoration or creation opportunities have been restored.

The Game and Fish Department reported the department does not actively pursue acquisitions, instead it relies on offers from landowners willing to sell land. The Game and Fish Department reported the department's 2017-19 biennium budget includes $800,000 for these land acquisitions. The Game and Fish Department reported acquisition offers are reviewed to determine if the offer appears to meet DOT mitigation needs, then contacts DOT if necessary. The Game and Fish Department reported DOT may purchase the property, restore wetlands, receive wetland mitigation credits, then enter an agreement with the Game and Fish Department for the long-term management of the property. The Game and Fish Department reported both departments will continue to work together in the future and evaluate land acquisitions on a case-by-case basis.

DEPARTMENT OF TRANSPORTATION

Department Fees

The Department of Transportation reported to the Budget Section in September 2017 and September 2018 regarding a report on fees charged by the department in comparison to the actual cost of providing the services for which the fees are charged pursuant to Section 13 of Senate Bill No. 2012 (2017). The Department of Transportation reported driver's licenses are valid for 6 years, the fee to customers is $15, and the cost to produce a driver's license is $21. The Department of Transportation reported customers are charged $5 for license plates while the cost of the plates is $5.95 plus shipping and handling costs of $4. Driver's license fees were last increased in 1987. Motor vehicle fees were last increased in 2005.

JOB SERVICE NORTH DAKOTA

Status of the Unemployment Trust Fund and the Modified Average High-Cost Multiplier

The Budget Section received a report in March 2018 from Job Service North Dakota on the status of the unemployment trust fund and the targeted modified average high-cost multiplier pursuant to Section 52-02-17. As of December 31, 2017, the balance of the unemployment trust fund was $134.6 million, $38.3 million below the projected 2017-19 biennium target balance of $172.9 million. The average high-cost multiplier for the period was 0.77, 0.23 below the projected 2017-19 biennium target of 1.0. The projected trust fund balance is $153.5 million in 2018, $158.4 million in 2019, and $162.0 million in 2020.

INFORMATION TECHNOLOGY DEPARTMENT

State Interoperable Radio Network

The Information Technology Department reported to the Budget Section in December 2017 and September 2018 regarding the implementation and progress of SIRN pursuant to Section 7 of House Bill No. 1178 (2017). The department reported SIRN is a project intended to improve mission critical public safety voice communication capacities for the North

Dakota public safety community. House Bill No. 1178 established a $0.50 fee to be imposed on assessed communication services for the use of the SIRN project. The department reported the fiscal note for House Bill No. 1178 estimated $9.6 million of revenue would be generated for SIRN during the 2017-19 biennium. The department reported the updated revenue estimate is $7.5 million to $8.0 million for the 2017-19 biennium. The department reported expenditures incurred through August 2018 totaled $49,975. The department is in contract negotiations with a vendor for SIRN and intends to award the contract in December 2018. While the 2017 Legislative Assembly provided loan authority of $15 million to ITD from the Bank of North Dakota for SIRN, ITD does not anticipate borrowing funds during the 2017-19 biennium.

Cloud Computing

The Information Technology Department reported to the Budget Section in March 2018 and September 2018 regarding ITD cloud computing initiatives. The department reported cloud computing is the delivery of computer services over the Internet. The department reported a transition to the cloud was started because cloud technology has been an IT standard for 15 years, many on-premise technologies are becoming obsolete, and many new systems are cloud-based. The department reported cloud technology offers security, operational, and cost advantages. The department reported cloud technology allows for increased data storage capabilities at lower costs than on-premise data centers, increased ability to deploy new IT systems, and allows for the delivery of data and computer power to any platform at any location.

The Information Technology Department reported the cloud strategy includes making North Dakota IT "cloud first." According to ITD, this strategy means new IT systems will be evaluated for deployment in the cloud as the first option and current IT systems will be evaluated for a transition to the cloud. The department reported IT systems will not be automatically placed in the cloud, and all system transitions to the cloud will be made in collaboration with agency personnel responsible for the system and data. The department reported in September 2018 that 30 state agencies have more than 170 applications and systems in the cloud. The department reported cloud-related expenditures will not change ITD rates charged to state agencies during the 2019-21 biennium. The department reported legislative action is not necessary to continue to move applications and systems to the cloud.

Shared Services Unification

The Information Technology Department reported to the Budget Section in March 2018 and September 2018 regarding ITD shared services unification initiatives. The department is implementing an IT shared services unification plan to consolidate IT services, such as desktop support and help desk services, and IT personnel in the Governor's cabinet of executive branch state agencies. The department reported the unification plan will improve IT productivity by establishing common systems and processes for communication and collaboration among executive branch agencies.

The Information Technology Department reported the unification plan includes the reorganization of top positions in ITD, including the establishment of positions which will report directly to the Chief Information Officer (CIO), including the Chief Operations Officer (COO), Chief Data Officer (CDO), Chief Technology Officer (CTO), Chief Reinvention Officer (CRO), and Chief Information Security Officer (CISO). The CDO, CTO, and CRO are new positions while the COO and CISO are positions that exist in ITD, but titles and some job duties have changed. The department reported salary savings from vacant positions will be used to provide funding for these positions.

As of September 2018, ITD has identified 511 information technology FTE positions, of which 344.30 FTE positions are employees of ITD and 167 FTE positions are from 12 Governor's cabinet agencies. The department reported all IT employees and related funding will remain in the respective agencies until changes are approved by the 2019 Legislative Assembly. The department indicated the report phase of the unification plan includes providing information to the Legislative Assembly during the 2019 legislative session. The department reported legislative proposals will include budget requests relating to the new IT shared services.

Cybersecurity

The Information Technology Department reported to the Budget Section in September 2018 regarding North Dakota government cybersecurity. The department reported state and local governments, including K-12 schools and higher education institutions have experienced cybersecurity issues. The report indicated the state has defended against 34 million vulnerability attacks, 3.3 million denial of service attacks, 88 million spam and phishing messages, and 1,300 "zero-day" attacks, for the period March 2018 through August 2018. A "zero-day" attack is a software attack that has no existing solution to mitigate the attack. According to the report, North Dakota elementary and secondary schools have been targeted by North Korea and other nation states. The department reported 1.4 percent of the state's budget is spent on cybersecurity, compared to a national state and local government average of 5.0 percent. The department anticipates proposing legislation to the 2019 Legislative Assembly to address cybersecurity strategic, operational, and workforce initiatives.

ELECTRONIC PAYMENT PROCESSING SYSTEM

Information Technology Department

The Information Technology Department reported to the Budget Section in December 2017 regarding the status of the electronic payment processing system authorized in Sections 10 and 11 of Senate Bill No. 2021 (2017). The department reported the Legislative Assembly provided six agencies with borrowing authority to obtain a loan from the Bank of North Dakota for the electronic payment processing system and appropriated funding to repay the loan, including interest. The six agencies were DOT, Secretary of State, Parks and Recreation Department, Game and Fish Department, Workforce Safety and Insurance, and Highway Patrol.

The Bank of North Dakota finalized a master agreement with J.P. Morgan Chase Bank and met with all six agencies regarding fees. As of December 6, 2017, all six agencies declined implementation of the electronic payment processing system and will not obtain loans from the Bank of North Dakota. Two additional agencies, Job Service North Dakota and the Department of Labor and Human Rights, voluntarily elected to implement the electronic payment processing system.

The Budget Section received information from DOT, Secretary of State, and the Parks and Recreation Department on the reasons the agencies did not implement the system and from the Bank of North Dakota regarding credit card fees and transaction processes. After the Budget Section concluded its work, DOT implemented the system on self-service kiosks to charge customers a 2.5 percent fee for credit card transactions.

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 4 of House Bill No. 1012 (2017). Through September 13, 2018, two transfers totaling $363,251 were made from the Management Division to the Program and Policy Division for salaries and wages. The department reported one transfer for $1,445,157 was made from the Program and Policy Division to the Management Division for operating expenses. The department reported five transfers totaling $6,197,530 were made between the salaries and wages, operating expenses, and grants line items of the Program and Policy Division.

LEGACY AND BUDGET STABILIZATION FUND

Advisory Board Report

The Budget Section received reports from the Legacy and Budget Stabilization Fund Advisory Board regarding the 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.

Legacy Fund

As of June 2017, the balance of the legacy fund was $4.63 billion, and is estimated to be $5.56 billion as of June 30, 2019. The Legacy and Budget Stabilization Fund Advisory Board reported as of March 31, 2018, the market value of the legacy fund was $5.38 billion. Through March 31, 2018, the net earnings in the legacy fund totaled $1.06 billion from inception, including $608.5 million of realized earnings based on the definition of earnings in Section 21-10-12. As of May 31, 2018, earnings of the legacy fund eligible for transfer to the general fund at the end of the 2017-19 biennium are $222.7 million. The unaudited fund performance for the year ended March 31, 2018, was 10.2 percent compared to a target return of 8.3 percent. The board reported that during the 5-year period ended March 31, 2018, the return was 5.8 percent compared to a target return of 4.7 percent.

Budget Stabilization Fund

As of March 2018, the balance of the budget stabilization fund was $38.3 million and an additional $75 million of oil tax collections will be deposited in the fund during the 2017-19 biennium. The Legacy and Budget Stabilization Fund Advisory Board reported the unaudited investment returns, net of fees, averaged 1.31 percent during the 5 years ended March 31, 2018, compared to a policy benchmark of 0.62 percent. Unaudited fund performance for the year ended March 31, 2018, net of fees, was 0.35 percent compared to a policy benchmark of 0.22 percent.

HOUSING FINANCE AGENCY

Housing Units Owned or Master Leased for Essential Service Workers

Pursuant to Section 54-17-40, the Budget Section received a report from the Housing Finance Agency regarding the 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 March 2018, the Budget Section was informed of the 475 units owned in 2018, 62 units are vacant, leased to nonessential service workers, or listed for sale. The Housing Finance Agency reported many affordable housing facilities were built in the 1970s and are in need of significant repair.

The Budget Section received the following information regarding housing units owned or master leased for essential service workers:

Type of Respondent	Housing Units Owned		Housing Units Master Leased		Rent Subsidies	
	2014	2018	2014	2018	2014	2018
City	39	30	150	0	108	0
County	48	32	50	0	0	0
First responder	14	8	10	0	15	0
Medical	157	163	92	4	2	0
School districts	228	242	99	0	0	0
Total	486	475	401	4	125	0

ATTORNEY GENERAL'S OFFICE

Litigation-Related Expenses

Section 5 of House Bill No. 1003 (2017) requires the Attorney General to provide quarterly reports to the Budget Section regarding all expenditures for litigation-related expenses from the Industrial Commission's litigation fund during the 2017-18 interim. As of September 12, 2018, the Attorney General's office has spent $2,029,177 on eight lawsuits from the litigation fund for litigation-related expenditures, of which $1,170,865 was spent during the 2015-17 biennium and $858,474 was spent during the 2017-19 biennium. The Attorney General reported an additional $141,526 of litigation fees are available to spend from the fund for the 2017-19 biennium.

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 on or before October 31 of each year, a fire department must file a certificate of existence to the State Fire Marshal. The State Fire Marshal reported funds distributed from the insurance tax distribution fund help communities maintain fire services with equipment, operations, buildings, vehicles, and other necessities. The State Fire Marshal reported certified fire departments, certified rural fire departments, and certified fire protection districts receiving funds are required to file a report with the State Fire Marshal detailing expenditures of funds and its committed and uncommitted reserve balances. The report must identify the purpose of any committed reserve balance and anticipated time period for spending the committed reserves. The Insurance Commissioner computes the amounts due to certified fire departments on December 1 of each year, and distributes the funds to each fire service jurisdiction in December of each year. The State Fire Marshal reported to be eligible, fire departments from cities, townships, or fire districts must be in operation for at least 8 months.

The State Fire Marshal reported as of October 31, 2017, 371 fire departments received $7,279,218 and spent $6,519,561. The State Fire Marshal reported $544,267,885 in premiums were obtained from 19,375 entities in fiscal year 2017.

HUB CITY REPORTS

The Budget Section received reports from hub cities in December 2017 regarding each city's use of funds received from hub city allocations from the oil and gas gross production tax under Section 57-51-15. Reports were received from Williston, Dickinson, Minot, Mandan, Bismarck, Fargo, West Fargo, and Jamestown.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Inmate Report

Pursuant to Section 54-23.3-11, the Budget Section received annual reports on DOCR's prison population management plan, inmate admissions, and the number of inmates not admitted after sentencing. The department reported in September 2017 and September 2018. The department reported the department had not refused to admit any inmates. The maximum operational capacity for male inmates is 1,624 while the maximum operational capacity for female inmates is 224. The department reported as of September 25, 2017, the average daily inmate population for males was 1,600 and the average daily inmate population for females was 224, while as of August 31, 2018, the average daily inmate population for males was 1,546 and the average daily inmate population for females was 206. The department reported the number of inmate admissions from July 1, 2017, to September 25, 2017, was 323 males and 70 females and the number of inmate admissions from July 1, 2017, to August 31, 2018, was 1,446 males and 347 females.

From April 21, 2017, to December 1, 2017, DOCR received 434 sentences with 7,825 days of good time awarded, averaging 18 days of good time awarded per inmate. According to DOCR, approximately 50 percent of department admissions receive good time reductions on their sentences, resulting in the average length of stay in a department facility to be reduced by 18 days.

TAX COMMISSIONER

Property Tax Annual Increases

The Budget Section received a report from the Tax Commissioner in accordance with Section 57-20-04, which requires the Tax Commissioner to provide information to the Legislative Management regarding a report received from county auditors related to annual increases in property taxes. The commissioner reported the Tax Department created an online tool to enable users to view mill levies imposed by political subdivisions and which allows users to view property tax changes for existing property for each political subdivision of the state.

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 the 2017-19 biennium beginning balance in the fund was $17.4 million. As of June 30, 2018, the estimated fund balance was $18.4 million, reflecting 2017-19 biennium revenues through June 2018 of $6.3 million and estimated expenditures through June 2018 of $5.3 million.

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 2017, the board reported the fund received $18,650,155 during the 2013-15 biennium and $19,978,952 during the 2015-17 biennium. The board reported the 2017-19 biennium funding for the North Dakota outdoor heritage fund is limited to $10 million. Nine grant rounds have been held since 2013, resulting in $31,347,123 being awarded to 112 projects throughout North Dakota and four additional grant rounds are scheduled during the 2017-19 biennium with application deadlines of November 1, 2017; April 1, 2018; October 1, 2018; and May 1, 2019.

STANDING ROCK SIOUX TRIBE

Tax Agreements

Section 57-39.8-02 requires a representative of the Standing Rock Sioux Tribe to provide an annual report to the Budget Section regarding any sales, use, or gross receipts tax agreements entered by the Standing Rock Sioux Tribe and that the report identify projects totaling investment in essential infrastructure of at least 10 percent of tribal receipts under the agreement for that year. The Chairman of the Standing Rock Sioux Tribe submitted a letter to the Legislative Council addressing this requirement and stating the tribe would not be providing information to the Budget Section due to the Tax Commissioner terminating the tax agreement entered by the tribe and the State of North Dakota.

The Budget Section received a report from the Tax Commissioner regarding the tax agreement entered by the state and the Standing Rock Sioux Tribe. The Tax Commissioner reported state laws have to be adopted by the tribe to administer and enforce the tax agreements. The Tax Commissioner reported after the agreement went into effect in July 2016, there was a disagreement between the state and the tribe regarding how casinos on the Standing Rock Reservation were taxed. The Budget Section was informed state laws do not recognize a casino as a government entity. As result, vendors of the casino were charged sales and use tax. The Tax Commissioner reported the tribe believed the casino should be exempt from sales and use tax and began administering exemption certificates to vendors of the casino, which was prohibited in the tax agreement entered by the state and the tribe. As a result, the Tax Commissioner terminated the agreement in March 2017.

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Investment of Oil and Gas Tax Receipts

Pursuant to Section 57-51.2-02, the Three Affiliated Tribes of the Fort Berthold Reservation reported to the Budget Section fees, expenses, and charges the tribe imposes on the oil industry and essential infrastructure projects completed by the Three Affiliated Tribes using oil and gas tax receipts. Fiscal year 2017 tax revenue collected totaled $130.6 million, including $66.3 million from gross production tax and $64.3 million from oil extraction tax. Fiscal year 2018 revenue collected totaled $181.8 million, including gross production tax of $91.9 million and oil extraction tax of $89.9 million. The Three Affiliated Tribes reported 10 percent of tax revenue collected during state fiscal years 2016 and 2017 was $9.7 million and $10.6 million, respectively. The report stated in tribal fiscal year 2016, $26.0 million was spent on the reconstruction of the Bureau of Indian Affairs Route 12 near Mandaree and in tribal fiscal year 2017, $25.0 million was spent to complete the reconstruction of Route 12.

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 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 2019 legislative session. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2019 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 66th Legislative Assembly through September 30, 2021.

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, 2019, and June 30, 2021. The report indicated agencies estimate $3.8 billion of federal funds will be received during the 2017-19 biennium, $77.6 million less than appropriated. Agencies estimate $3.8 billion of federal funds will be received for the 2019-21 biennium, $88.0 million more than is estimated to be received during the 2017-19 biennium. The Legislative Council staff reported of the 343 state programs in 38 state agencies receiving federal funding during the 2019-21 biennium, 167, or 49 percent, are subject to possible federal sequestration.

The Budget Section reviewed a memorandum on the largest variances by agency for the 2017-19 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 2017-19 biennium relating to federal funds appropriated and federal funds estimated to be received and the major variances estimated for the 2019-21 biennium compared to the 2017-19 biennium.

LEGISLATIVE COUNCIL STAFF REPORTS

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

- *65th Legislative Assembly Budget Status Report for the 2017-19 Biennium*. The report provides information on the status of the general fund and estimated June 30, 2019, ending balance, legislative changes to general fund revenues, and legislative appropriation changes.
- *65th Legislative Assembly Legislative Changes to State Agency Budgets for the 2017-19 Biennium*. The report provides information on legislative changes to agency budgets and is a compilation of the statements of purpose of amendment for action taken on appropriation bills during the 2017 session.
- *65th Legislative Assembly State Budget Actions for the 2017-19 Biennium*. The report provides information on the 2017-19 state budget, FTE positions, ongoing and one-time general fund appropriations, federal fiscal stimulus funding, one-time funding, major programs, and related legislation for each state agency. The report also includes an analysis of major special funds and statistical information on state appropriations.
- *Estimated Revenue Sources and Distributions for Major State funds for the 2017-19 Biennium*. The report provides information regarding revenue sources and transfers to major state funds and state agencies.
- *Oil and Gas Tax Revenue Allocation Flowchart*. The report provides information on the estimated allocation of oil and gas tax collections for the 2017-19 biennium based on the 2017 legislative revenue forecast.
- *2017-19 Biennium Report on Compliance with Legislative Intent*. The report provides the current status of major budget changes and initiatives approved by the 2017 Legislative Assembly for various agencies. The report contains information regarding the status of major state trust funds.
- *2017* and *2018 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:

- Office of Management and Budget - Governor's residence construction project - The report includes information regarding the Governor's residence construction project as of December 2017. The Office of Management and

Budget reported of the $5 million appropriated for the project, $4.55 million has been spent and $300,000 is committed for additional expenditures. The Office of Management and Budget reported of the amount spent, $850,000 was from private donations and an additional $150,000 of private donations is expected to be raised.

- Office of Management and Budget - Heritage Center project - The report includes information regarding the lawsuit with Comstock Construction related to the construction of the new North Dakota Heritage Center and State Museum. The Office of Management and Budget reported the court awarded $337,000 to Comstock Construction for contracted items not paid by the State Historical Society. The Office of Management and Budget reported the court also awarded $1,058,000 for limestone removal and reinstallation, for a total amount of $1,395,000 awarded to Comstock Construction.
- Office of Management and Budget - Bank of North Dakota loans - The report includes information regarding loans provided by the Bank of North Dakota to state agencies during the 2017-19 biennium. The Office of Management and Budget reported the Bank was authorized to provide nine loans totaling $371.1 million during the 2017-19 biennium, of which $103.5 million has been loaned through August 2018. Of the $371.1 million of loans authorized, $115.0 million relates to Western Area Water Supply loans and $87.0 million to the Department of Trust Lands for mineral revenue repayments.
- Department of Public Instruction - K-12 student enrollments, updated state school aid spending for the 2017-19 biennium, and estimated cost-to-continue state school aid for the 2019-21 biennium - The report includes information on student enrollments for the 2017-18 academic year, projected student enrollments for the next 3 academic years, projected state school aid spending for the 2017-19 biennium, and the estimated cost-to-continue state school aid for the 2019-21 biennium. As of March 2018, the Department of Public Instruction reported fiscal year 2018 state aid formula payments totaling $948.4 million compared to a budget of $961.5 million. The department reported estimated unspent 2017-19 biennium general fund appropriations, excluding special education contract costs, is $14.7 million, which is primarily due to approximately 500 fewer students than budgeted. The department reported the total public school enrollment was 108,945 during the 2017-18 school year and is projected to be 111,890 and 115,247 during the 2018-19 and 2019-20 school years, respectively. The department reported an additional $78.1 million of state aid funding will be needed to address cost-to-continue items during the 2019-21 biennium.

AGENCY REQUESTS CONSIDERED BY THE BUDGET SECTION

Pursuant to Sections 37-17.1-27, 54-16-04(2), 54-16-04.1, 54-16-04.2, and 54-16-09, the Budget Section considered agency requests authorized by the Emergency Commission. The Budget Section approved 11 of the 12 requests during the 2017-19 biennium, authorizing increased special fund spending authority by $231,550, increased federal fund spending authority by $31,124,500, line item transfers of $300,000, and expenditures from the state disaster relief fund of $4,512,468.

On June 21, 2017, the Adjutant General requested authority to spend $8,523,161 from the state disaster relief fund for reimbursing political subdivisions for the state share of disaster-related costs that have been incurred and submitted to the Adjutant General for payment relating to previous state disasters. The amount requested was an estimate of the total disaster-related costs needed during the 2017-19 biennium. The Budget Section did not approve the request but suggested the Adjutant General request approval when actual disaster-related costs are known. The Adjutant General requested approval to spend state disaster relief funds for known costs during the September 2017, December 2017, March 2018, July 2018, and September 2018 Budget Section meetings. All of these requests were approved by the Budget Section.

The following is a list of 11 agency requests approved from June 21, 2017, through September 13, 2018:

Adjutant General

- September 28, 2017, to authorize the expenditure of $528,868 from the state disaster relief fund for reimbursing political subdivisions for the state share of disaster-related costs incurred and submitted to the Adjutant General for payment relating to previous state disasters.
- September 28, 2017, to authorize a transfer of $300,000 from the Department of Emergency Services operating expenses line item to the radio communications line item, relating to the purchase of a portable communications tower to improve communications in areas of limited service.
- September 28, 2017, to increase federal funds spending authority by $10 million from a federal Department of Justice grant to repay the Bank of North Dakota for a portion of the loans obtained for expenses incurred by the state for law enforcement support.

- December 6, 2017, to authorize the expenditure of $658,144 from the state disaster relief fund for reimbursing political subdivisions for the state share of disaster-related costs incurred and submitted to the Adjutant General for payment relating to previous state disasters.
- March 21, 2018, to authorize the expenditure of $1,548,633 from the state disaster relief fund for reimbursing political subdivisions for the state share of disaster-related costs incurred and submitted to the Adjutant General for payment relating to previous state disasters.
- July 11, 2018, to authorize the expenditure of $1,312,221 from the state disaster relief fund for reimbursing political subdivisions for the state share of disaster-related costs incurred and submitted to the Adjutant General for payment relating to previous state disasters.
- September 13, 2018, to authorize the expenditure of $464,602 from the state disaster relief fund for reimbursing political subdivisions for the state share of disaster-related costs incurred and submitted to the Adjutant General for payment relating to previous state disasters.

Department of Public Instruction

- December 6, 2017, to increase federal funds spending authority by $18 million in the grants - other grants line item to accept and expend funds form a Striving Readers Comprehensive Literacy Program competitive grant, awarded by the United States Department of Education, Office of Academic Improvement.

Secretary of State

- September 13, 2018, to increase federal funds spending authority by $3 million to accept and spend federal funds received from the Federal Election Assistance Commission for the Federal Help America Vote Act.

State Department of Health

- December 6, 2017, to increase special funds spending authority by $231,550 in the salaries and wages line item ($181,130) and the operating expenses line item ($50,420), and to accept and expend funds from the states of Texas and Florida under the Emergency Management Assistance Compact.

State Library

- July 11, 2018, to increase federal funds spending authority by $124,500 in the grants to libraries line item to accept and expend federal funds from the Institute of Museum and Library Services.

EDUCATION FUNDING COMMITTEE

The Education Funding Committee was assigned the following responsibilities:

1. House Bill No. 1318 (2017) provided the Legislative Management appoint a committee consisting of five members of the Senate and six members of the House of Representatives to:
   a. Examine how state aid for elementary and secondary education is determined and distributed under the state aid funding formula, analyze the impact of the state aid provided through the funding formula, and consider potential necessary changes to the funding formula to ensure equity, adequacy, and sustainability; and
   b. Examine the delivery and administration of elementary and secondary education in the state and the short- and long-term policy and statutory changes that may result from or be necessitated by 21st century technological advances and global economics.
2. House Bill No. 1423 (2017) provided for a study of the portion of the elementary and secondary education funding formula which relates to the utilization of in lieu of property tax funds for the purpose of identifying and addressing any inequities in the application of the formula.
3. The Legislative Management also assigned the committee the responsibility to receive the following reports from the Superintendent of Public Instruction (SPI) regarding:
   a. The financial condition of school districts (North Dakota Century Code Section 15.1-02-09);
   b. Annual school district employee compensation reports (Section 15.1-02-13); and
   c. The use of teacher loan forgiveness funds received under Senate Bill No. 2037 (2017), including the amount distributed, the number of eligible individuals receiving funds, the recruitment and retention of individuals participating in the program, the average starting salaries of individuals participating in the program, and the effectiveness of the program as determined under criteria developed by the SPI (Section 4 of Senate Bill No. 2037).

Committee members were Senators Donald Schaible (Chairman), Kyle Davison, Ralph Kilzer, Erin Oban, and David S. Rust and Representatives Pat D. Heinert, Richard G. Holman, Dennis Johnson, David Monson, Mark S. Owens, Mark Sanford, and Cynthia Schreiber-Beck.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

ELEMENTARY AND SECONDARY EDUCATION STATE AID AND FUNDING FORMULA STUDY

House Bill No. 1318 directed a study of how state aid for elementary and secondary education is determined and distributed under the state aid funding formula, the impact of the state aid provided through the funding formula, and potential changes to the funding formula to ensure equity, adequacy, and sustainability. The bill also directed an examination of the delivery and administration of elementary and secondary education in the state and the short- and long-term policy and statutory changes that may result from or be necessitated by 21st century technological advances and global economics. In addition House Bill No. 1423 provided for a study of the portion of the elementary and secondary education funding formula which relates to the utilization of in lieu of property tax funds for the purpose of identifying and addressing any inequities in the application of the formula. These directives were combined into one study.

Background

North Dakota Constitutional Directives

Section 1 of Article VIII 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.

Section 2 of Article VIII 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.

Section 3 of Article VIII 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."

Section 4 of Article VIII 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

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 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 late 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 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 otherwise would 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 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 to have 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 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 Sections 1 and 2 of Article VIII and Sections 21 and 22 of Article I 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 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:

> [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 SPI, 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 to specifically address the adequacy of education, the equitable distribution of funding, and the allocation of funding.

The recommendations of the North Dakota Commission on Education Improvement became the basis for Senate Bill No. 2200 (2007), which provided a new education funding formula. The bill consolidated education funding that had been assigned to a variety of existing funding categories and established new weighting factors that reflected the added costs of providing education to certain categories of students and the added costs of providing various statutorily mandated services. In addition, the new formula factored in the variable cost of providing services and programs in small, medium, and large school districts. 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.

2007-08 Interim

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 strategies must be deployed to use resources in ways that would double student performance on state tests over 4 to 6 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 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 to achieve adequacy, the expenditure per student would need to be $7,293.

Picus also insisted 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.

2009 Legislative Session

In 2009, after reviewing the Picus report, the North Dakota Commission on Education Improvement made its own recommendations to the Legislative Assembly, many of which were enacted in House Bill No. 1400. At the conclusion of the 2009 legislative session, the North Dakota Commission on Education Improvement began its third and final interim effort and provided its recommendations to the 2011 Legislative Assembly.

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 Senate Bill No. 2150 and 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 and $48.5 million for transportation.

Property Tax Relief Legislation

While educational equity and adequacy continued to be dominant legislative concerns, additional time and attention was now being given to the 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 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 $299 million. By 2011 the program's price tag had risen to $341.8 million and there existed concerns regarding the overall effectiveness of the mill levy reduction grant program as a mechanism for property tax relief, the program's potential to result in the rededication of locally generated revenues to other purposes, and long-term sustainability.

State School Aid and Integrated Property Tax Relief

2013 Legislative Session

When the Legislative Assembly convened in January 2013, the principal education funding package contained a new proposal for funding elementary and secondary education, which included property tax relief provided through an integrated formula. Introduced as House Bill No. 1319, the new proposal was defeated on the morning of the 80th day of the legislative session, but the content was attached later as an amendment to House Bill No. 1013 and enacted. The legislative appropriation for the state school aid program followed substantially the executive budget recommendation to integrate property tax relief in the K-12 state school aid funding formula. The formula change discontinued the mill levy reduction grant program and provided the state will determine an adequate base level of support necessary to educate students by applying an integrated payment rate to the weighted student units. This base level of support will be provided through a combination of local tax sources, local revenue, and state integrated formula payments. The local funding requirement is set at 60 mills and a percentage of identified local in lieu of property tax sources and local revenues. Base level support not provided by local sources is provided by the state through the integrated formula payment. In addition, school districts are allowed an additional 10-mill levy for general fund purposes, an additional 12-mill levy for miscellaneous purposes, and a 3-mill levy for a special reserve fund. The legislation provided for a district's weighted student units to be multiplied by integrated formula payment rates of $8,810 during the 1st year of the 2013-15 biennium and $9,092 during the 2nd year, an inflationary increase based on total expenditures per student suggested by Picus during the 2008 study conducted for the North Dakota Commission on Education Improvement.

Minimum and maximum payment levels were established using a statutorily defined baseline funding level that includes:

- All state aid received by the district in accordance with Chapter 15.1-27 during the 2012-13 school year;
- The district's 2012-13 mill levy reduction grant, as determined in accordance with Chapter 57-64, as it existed on June 30, 2013;
- An amount equal to that raised by the district's 2012 general fund levy or that raised by 110 mills of the district's 2012 general fund levy, whichever is less;
- An amount equal to that raised by the district's 2012 long-distance learning and educational technology levy;
- An amount equal to that raised by the district's 2012 alternative education program levy; and
- An amount equal to:

  75 percent of all revenue received by the school district and reported under code 2000 of the *North Dakota School District Financial Accounting and Reporting Manual*, as developed by the SPI in accordance with Section 15.1-02-08;

  75 percent of all mineral revenue received by the school district through direct allocation from the State Treasurer and not reported under code 2000 of the *North Dakota School District Financial Accounting and Reporting Manual*, as developed by the SPI in accordance with Section 15.1-02-08;

  75 percent of all tuition received by the school district and reported under code 1300 of the *North Dakota School District Financial Accounting and Reporting Manual*, as developed by the SPI in accordance with Section 15.1-02-08, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility and tuition received for the provision of an adult farm management program;

75 percent of all revenue received by the school district from payments in lieu of taxes on the distribution and transmission of electric power;

75 percent of all revenue received by the school district from payments in lieu of taxes on electricity generated from sources other than coal;

All revenue received by the school district from mobile home taxes;

75 percent of all revenue received by the school district from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3);

All telecommunications tax revenue received by the school district; and

All revenue received by the school district from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans' credit.

From this baseline total, the legislation called for a subtraction of 60 mills multiplied by the district's taxable valuation, not to exceed the amount in dollars subtracted the prior year plus 12 percent, and a subtraction of the specified portion of the in lieu of taxes revenues listed in the preceding paragraph.

School district boards had been authorized to levy an amount sufficient to cover a multitude of expenses; however, the enactment of House Bill No. 1013 provided for the consolidation of these levies. The bill authorized the board of a school district to levy:

- 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, 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 3 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.

2013-14 Interim

During the 2013-14 interim, the Education Funding Committee was assigned a study, pursuant to Section 58 of House Bill No. 1013 (2013), of state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education in the state. The dollar amounts by which a district's weighted student units were multiplied, to arrive at a funding level for the 2013-15 biennium, were determined by applying an inflationary increase to the "adequate" funding level the Picus study recommended as part of its final report to the North Dakota Commission on Education Improvement in 2008. Given the passage of 5 years and changes in the state's economic and demographic circumstances, the Legislative Assembly determined it would be appropriate to review and clarify 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 2008 recommendations and conduct a recalibration using an evidence-based model and the most recent data available. Based on available information and assumptions, Picus recommended recalibrated weighting factors and increased payment rates from the 2013-15 biennium levels of $8,810 and $9,092 to $9,347 and $9,442. The interim committee did not recommend the Picus funding model. The committee recommended Senate Bill No. 2031 (2015) relating to the funding of elementary and secondary education. The bill set per student funding rates of $9,482 for the 1st year of the biennium and $9,766 for the 2nd year. The rate of $9,482 was determined by subtracting $236, which represented the 8 days of professional development Picus had recommended, but which the committee did not require, from the Picus recommendation of $9,442. The remainder was then increased by 3 percent to arrive at $9,482. A 2nd year increase of 3 percent brought the 2nd year payment rate to $9,766.

2015 Legislative Session

In 2015 the Legislative Assembly approved Senate Bill No. 2031 which provided increases in the integrated payment rate of 3 percent per year during the 2015-17 biennium, based on the integrated formula payment rate during the 2nd year of the 2013-15 biennium. Integrated payment rates were set at $9,365 during the 1st year and $9,646 for the 2nd year of the 2015-17 biennium. In addition, the bill removed the sunset on the K-12 integrated formula for state school aid, adopted by the 2013 Legislative Assembly. The 2015 Legislative Assembly also approved Senate Concurrent Resolution No. 4003, which proposed a constitutional amendment to allow the Legislative Assembly to appropriate or transfer the principal balance of 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 education-related purposes. The resolution was approved by voters in November 2016. In 2016, due to revenue shortfalls during the 2015-17 biennium, the Governor ordered two allotments totaling 6.55 percent and transfers from the foundation aid stabilization fund to offset foundation aid reductions made by executive action totaled $116,053,293.

2017 Legislative Session

In 2017 the Legislative Assembly considered House Bill No. 1324. The bill included changes to the percentages of local "in lieu of" revenues deducted from the total formula payment when determining state funding. However, formula changes approved in House Bill No. 1324 did not include changes to local revenue deductions, but included an adjustment to set the integrated payment rate at $9,646 for each year of the 2017-19 biennium, the same as the 2nd year of the 2015-17 biennium. The Legislative Assembly, in House Bill No. 1318, provided for a Legislative Management study of how state aid for elementary and secondary education is determined and distributed under the state aid funding formula; the impact of state aid; potential changes to the funding formula to ensure equity, adequacy, and sustainability; the delivery and administration of elementary and secondary education in the state; and the short- and long-term policy and statutory changes that may result from or be necessitated by 21st century technological advances and global economics. In addition, the Legislative Assembly approved House Bill No. 1423 to provide for a Legislative Management study of the in lieu of property tax portion of the elementary and secondary education funding formula for the purpose of identifying and addressing any inequities in the application of the formula.

In House Bill No. 1013 (2017) the Legislative Assembly provided an appropriation of $1,935,204,163, of which $1,334,657,258 was from the general fund, $295,000,000 from the foundation aid stabilization fund, and $305,546,905 from the state tuition fund for state school aid integrated formula payments. Of the $295,000,000 provided from the foundation aid stabilization fund, $185,000,000 was to be considered one-time funding. This level of funding represents an increase of $18,564,163, including a decrease in funding of $246,795,449 from the general fund and increases in funding of $178,946,707 from the foundation aid stabilization fund and $86,412,905 from the state tuition fund, from the 2015-17 biennium adjusted appropriation for integrated formula payments of $1,916,640,000. Increases in state school aid integrated formula payments included the cost-to-continue the 2015-17 biennium 2nd year integrated formula payment increase ($54 million), cost of projected student growth ($57.7 million), and cost associated with an increase in the English language learner weighting factors approved by the 2015 Legislative Assembly and effective July 1, 2017 ($900,000). These increased costs were partially offset by increases in the local cost-share, including local property tax sources and local revenue.

The Legislative Assembly provided $55.4 million from the general fund for transportation aid during the 2017-19 biennium. This level of funding is $1.6 million less than 2015-17 biennium funding of $57 million from the general fund. Section 13 of House Bill No. 1013 requires the Department of Public Instruction (DPI) to distribute transportation aid for the 2017-19 biennium based on the state transportation formula as it existed on June 30, 2001, except that the department is to provide reimbursement at the rate of:

- $1.11 per mile for schoolbuses having a capacity of 10 or more passengers.
- $0.52 per mile for vehicles having a capacity of nine or fewer passengers.
- $0.50 per mile round trip for family transportation of a student with a disability whose individualized education program plan requires that the student attend a school outside the student's school district of residence.
- $0.50 per mile one way for family transportation if the student lives more than 2 miles from the public school the student attends.
- $0.30 per student for each one-way trip.

The Legislative Assembly provided $19.3 million from the general fund for special education contracts during the 2017-19 biennium. This level of funding is $2 million more than 2015-17 biennium funding of $17.3 million from the general fund. In addition, the Legislative Assembly, in Section 26 of House Bill No. 1013, repealed Section 6-09-45, relating to a required transfer from Bank of North Dakota undivided profits to provide funding for special education contract costs in excess of funds appropriated. In Section 11 of House Bill No. 1013, the Legislative Assembly provided if special education contract obligations exceed funds provided for the 2017-19 biennium, the SPI shall request a deficiency appropriation from the 66th Legislative Assembly.

The Legislative Assembly, in Senate Bill No. 2272, provided one-time funding of $6,000,000 from the foundation aid stabilization fund to the SPI for rapid enrollment grants during the 2017-19 biennium. This level of funding is $6,504,530 less than the adjusted one-time 2015-17 legislative appropriation of $12,504,530 from the general fund. Grants are distributed to districts experiencing an increase of at least 4 percent, or 150 students, and no less than 20 students. The district's grant is determined by reducing the actual percentage increase in the number of students by 2 percent and multiplying the number of students represented by the reduced percentage by $4,000. The Superintendent may not award more than $3,000,000 in grants during the 1st year of the 2017-19 biennium and if funding is not sufficient to provide all of the eligible grants, the SPI must prorate the payment based on the percentage of the total amount to which the school district is entitled. A district is precluded from receiving a rapid enrollment grant if the district is not eligible to receive state aid because its general fund ending balance exceeds the unobligated general fund balance limits provided in Section 15.1-27-35.3.

Foundation Aid Stabilization Fund

Prior to December 8, 2016, the principal of the foundation aid stabilization fund was available only upon order of the Governor to offset foundation aid reductions made by executive action due to a revenue shortfall. Section 54-44.1-12 provided the Director of the Budget may order an allotment to control the rate of expenditures of state agencies. This section provided an allotment must be made by a 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 only may be allotted to the extent the allotment can be offset by transfers from the foundation aid stabilization fund.

In November 2016 voters approved a measure proposed by Senate Concurrent Resolution No. 4003 (2015), which amended the Constitution of North Dakota to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for education-related purposes.

In 2017 the Legislative Assembly approved Senate Bill No. 2272 and House Bill No. 1155, which amended Section 54-44.1-12 to provide any reductions to the general fund appropriation to the Department of Career and Technical Education for grants to school districts due to allotment also are offset by funding from the foundation aid stabilization fund. In addition, Senate Bill No. 2272 created a new section to Chapter 54-27 to provide for purposes of Section 24 of Article X of the Constitution of North Dakota, education-related purposes means purposes related to public elementary and secondary education and state aid to school districts means general fund appropriations for state school aid, transportation aid, and special education aid in DPI, as well as general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education.

Elementary and Secondary Education State Aid Formula - Selected Provisions

School District Hold Harmless Calculations - Minimum and Maximum Adjustments

The committee reviewed the use of transition minimum and maximum adjustments in the state school aid formula. When the state school aid formula was implemented during the 2013-15 biennium, hold harmless calculations were included to avoid disrupting school budgets. Districts with formula adjustments for transition minimum and maximum adjustments are not considered to be on the state school aid formula.

Transition minimum adjustments apply to those districts that were above the per-pupil payment rate when the formula was implemented. Districts above the formula amount were subject to a transition minimum to hold the districts harmless under the new formula. These districts received a 2 percent increase each year of the 2013-15 and 2015-17 bienniums to provide a minimum of 108 percent of the district's baseline funding per weighted student unit multiplied by the district's prior year weighted student units, or 100 percent of the district's baseline funding dollars whichever is greater. There was no increase in the transition minimum adjustment during the 2017-19 biennium. Two hold harmless minimum calculations--baseline funding per weighted student unit and total baseline funding dollars--guarantee school districts will not receive less funding per weighted student unit or in total than the funding received during the 2012-13 school year.

Transition maximum adjustments apply to those districts that were below the per-pupil payment rate in the 2012-13 base year when the formula was implemented. Districts below the formula amount were subjected to a transition maximum to avoid excess funding. For these districts the maximum was increased 10 percent each year of the 2013-15 and 2015-17 bienniums to 140 percent of the district's baseline funding per weighted student unit multiplied by the district's prior year weighted student units. There was no increase in the transition maximum adjustment during the 2017-19 biennium.

Districts on the formula--those not subject to minimum or maximum adjustments--were given 3 percent increases each year of the 2013-15 and 2015-17 bienniums as the integrated formula payment was adjusted annually. There was no increase in the integrated formula payment rate during the 2017-19 biennium.

The total formula amount is adjusted for school district minimum and maximum calculations and the local contribution of 60 mills and local in lieu of revenue is deducted. State school aid is reduced for districts with ending fund balances that exceed 35 percent of expenditures plus $50,000 ($100,000, if the district is in a cooperative agreement for 2 years). The amount remaining after deductions is provided by the state. Hold harmless calculations are applied to total state and local funding, which is divided by total weighted student units to determine state and local funding per weighted student unit. Districts with state and local funding per weighted student unit equal to $9,646 are on the formula and do not have adjustments for minimum or maximum payments. Districts with state and local funding per weighted student unit above $9,646 receive transition minimum funding. Districts with state and local funding per weighted student unit below $9,646 are subject to the transition maximum calculation.

The Department of Public Instruction reported, for the 2017-18 school year, 98 of the 173 school districts receiving state school aid were not on the formula. The department reported 11 school districts were subject to transition maximum deduction adjustments and 87 school districts were subject to transition minimum increases. Of the 87 school districts receiving transition minimum funding, 22 school districts are subject to the minimum hold harmless in baseline funding dollars.

School District Mill Levy Limitations

The committee reviewed limits on property tax increases and the impact of limits on mills levied by school districts and property tax revenue deducted in the state school aid formula. During the 2015-16 school year, statewide, school districts levied $274.2 million on $4.1 billion of 2015 taxable valuation for their general funds. During the 2016-17 school year, statewide, school districts levied $289.2 million on $4.4 billion of 2016 taxable valuation for their general funds. Based on the 2015 tax levy, the local property tax contribution deducted in the state school aid formula for all districts during the 2016-17 school year was $219.7 million, $54.4 million less than the property tax levied for the 2015-16 school year and $69.5 million less than the property tax levied for the 2016-17 school year.

While dollars levied based on 2016 property valuations are distributed to school districts in the 2016-17 school year, the integrated state school aid formula uses 2016 property valuations for purposes of calculating the local property tax deduction for the 2017-18 school year formula payment. Based on the 2016 tax levy, the local property tax contribution deducted in the state school aid formula for all districts during the 2017-18 school year was $237.9 million.

"Property poor" districts are required to meet a minimum local effort. If a district's taxable valuation per student is less than 20 percent of the statewide average valuation per student, the formula will use an amount equal to 60 mills times 20 percent of the statewide average valuation per student multiplied by the number of weighted student units. This results in computed mills in the formula that are higher than 60 mills for seven districts. The statewide average taxable valuation per pupil for the 2016-17 school year was $33,396. During the 2016-17 school year the formula deduction for 41 districts was below 60 mills, 74 districts were levying below 60 mills, and 33 districts were levying 70 mills or more. The Department of Public Instruction reported 89 school districts levy for miscellaneous purposes, generating $22.5 million annually, that is not offset in the funding formula. The department noted that if a district does not levy up to the same increase deducted in the state school aid formula, the district will lose the difference between the amount deducted in the formula and the actual amount based on the levy. The state school aid formula statutorily deducts up to the 12 percent increase whether it is levied or not.

The committee reviewed the impact of the 12 percent limit on the increase in property tax revenue assessed and deducted in the state school aid formula. Districts unable to tax at the full 60 mills, due to increases in school district property valuation that result in property tax revenue increases in excess of 12 percent over the prior year, could be considered not on the formula. The 12 percent restriction effectively lowers the mill rate to below 60 mills for districts with rapidly increasing property valuations. When growth in the taxable valuation of a school district exceeds the 12 percent limit on growth in the formula, the state is required to increase its share of state school aid because the local share of property tax deducted in the formula is below the 60 mills provided by the formula. Removing the 12 percent limit on the growth of the general fund mill levy would not change the total state school aid provided to districts, but would decrease the state's cost because more local property tax revenue would be deducted in the formula. If districts, for which the deduction is less than the full 60 mills due to the 12 percent annual limitation, were deducted at the full 60 mills in the formula in the 2017-18 school year, an estimated $29.7 million in state school aid funding would be shifted from state to local resources. Removing the 12 percent limit on property tax increases would remove the taxpayer protection provision in the formula. Increasing assessments in all districts to 60 mills may create hardships for taxpayers in certain districts.

The committee reviewed the impact of new property growth on the limits placed on property tax increases. The committee examined school district general fund maximum levy worksheets presented by the Tax Department. More than one section of law determines the calculation of maximum general fund levy authority. The Tax Department's maximum levy worksheet for the school district general fund summarizes these calculations to determine which calculation provides the most dollars for the fund. School district general fund maximum levy worksheets are created by the headquarter county for each school district. If districts cross county lines, only one worksheet is completed for the district with information provided by the other counties. Mill levy rates are calculated by the headquarter county and shared with the other counties to apply to their tax statements. The committee reviewed the calculations on two sample school district general fund maximum levy worksheets, one worksheet for a district experiencing significant growth in taxable value and one for a district with a relatively stable taxable valuation. Calculations included determining districts' 12 percent limit on property tax increases, base year taxable value adjustments, voter-approved excess mill levy adjustments, and maximum mill levy calculations. Base-year tax is the higher of taxes levied in the past 3 years. The base-year tax is adjusted for new construction or losses to taxable valuation. Base-year tax calculations protect districts by allowing the districts to maintain a level of funding by increasing the mill rate when property values decrease. The additional property tax potential of the new growth is added to base-year taxes. New property includes property added

to the district since the base year, including property added through annexation and local discretionary exempt property. Adjustments for new property increase base-year taxes and can protect taxpayers by allowing districts to collect the same amount of funding at a lower mill levy rate. However, districts may certify higher budgets in the year of the new growth in property value to collect additional property taxes rather than certifying similar budgets as the prior year and reducing the mill levy rate to collect the same amount of revenue. Maximum general fund levy authority is determined by comparing the largest of the prior year taxes plus 12 percent, adjusted base year taxes, and voter-approved excess levy worksheet calculations. School districts are most often limited by the maximum 12 percent increase provided in Section 57-15-14.2, because it results in more levy authority. The final levy is the lesser of the maximum general fund levy authority or the school district's certified budget. Districts above 60 mills will likely use the prior year taxes plus 12 percent calculation if there are no significant changes in taxable value due to property value added to or removed from the base year. The Tax Department reported a substantial amount of new property would have to be added to a district for the tax on the new property to exceed the 12 percent limit on growth.

In Lieu of Property Tax Revenue and Other Local Revenue Deductions

The committee gathered information regarding total revenue from in lieu of property taxes and local revenue received by each school district in the state, compared to the contribution from in lieu of property tax and local revenue deducted in the state school aid formula. Information regarding in lieu of revenues is reported to DPI by counties each August. The Department of Public Instruction provided a statewide summary of in lieu of property taxes and local revenue received during the 2015-16 school year by revenue type deducted in the state school aid formula. Total revenue for these types of in lieu of property taxes and local revenue was $68.0 million during the 2015-16 school year, resulting in a contribution from in lieu of property taxes and local revenue deducted in the state school aid formula of $53.7 million during the 2016-17 school year. The cost to the state of deducting 75 percent of all in lieu of property taxes and local revenue in the state school aid formula would be approximately $3 million per year, or $6 million per biennium. If all in lieu of property taxes and local revenue were deducted at 100 percent in the state school aid formula the state would save approximately $15 million per year, or $30 million per biennium.

Department of Public Instruction guidance relating to school district financial accounting provides 100 percent of oil and gas production, coal production, and coal conversion tax revenue be deposited in the school's general fund. Revenue from federal flood control and oil and gas production, coal production, and coal conversion tax revenue, deposited into the school's general fund are deducted at 75 percent in the state school aid formula. A majority of the remaining revenues, deducted in the state school aid formula at 100 percent, are deposited into various school district funds based on mill levy distribution. Some districts reported using oil and gas production revenue for capital projects. This could result in the deduction of certain revenue at 100 percent in the formula even if only a portion of the revenue is deposited in the school district's general fund. The department provided the following summary of in lieu of property tax and local revenue received by school districts during the 2015-16 school year, including the method by which the revenue is distributed to various school funds and the percent deducted in the state school aid formula.

In Lieu of Property Tax and Local Revenue Type	Distribution Method	2015-16 Revenue Received	Percent Deducted in the Formula	2016-17 Potential Revenue Deducted in the Formula
Homestead credits	Mill levy	$2,303,228	100%	$2,303,228
Game and Fish land	Mill levy	315,392	100%	315,392
Land owned by Board of University and School Lands or State Treasurer	Mill levy	54,028	100%	54,028
National Guard land	Mill levy	13,717	100%	13,717
Land owned by nonprofit organizations for conservation purposes	Mill levy	21,427	100%	21,427
Land acquired by the State Water Commission	Mill levy	6,806	100%	6,806
Workforce Safety and Insurance building	Mill levy	75,474	100%	75,474
Mobile home taxes	Mill levy	1,466,841	100%	1,466,841
Other revenue in lieu of property taxes	Mill levy	953,999	100%	953,999
Disabled veterans' property tax credits reimbursed by the state	Mill levy	1,187,850	100%	1,187,850
Compensation for flood land leased by the United States under 33 U.S.C. 701(c)(3)	General fund	2,508,202	75%	1,881,152
Electric generation, distribution, and transmission tax	Mill levy	4,279,354	75%	3,209,516
Telecommunications tax	General fund	4,805,328	100%	4,805,328
Oil and gas production tax	General fund	32,714,414	75%	24,535,811
Coal production tax	General fund	2,230,651	75%	1,672,988
Coal conversion tax	General fund	1,012,222	75%	759,167
Tuition	General fund	14,084,450	75%	10,563,338
Total		$68,033,383		$53,826,062[1]

[1]School districts with sufficient local revenue do not receive a state school aid payment due to the local revenue deduction. The in lieu of property taxes and local revenue deduction cannot result in negative state school aid, therefore the potential total revenue deducted in the formula of $53.8 million is slightly higher than the in lieu of revenue actually deducted in the state school aid formula for the 2016-17 school year.

Of the $68.0 million of in lieu of property tax and local revenue received by school districts during the 2015-16 school year, under the current policy, an estimated $57.4 million (84 percent) was deposited into districts' general funds. The next year $53.8 million was deducted in the formula, which allowed districts $3.6 million of the in lieu of property tax and local revenue deposited in the general fund which was not deducted in the formula. Statewide, the average percent of property tax mill levies deposited into districts' general funds is 67.4 percent. The Department of Public Instruction reported if the policy were changed to allocate all in lieu of property tax and local revenue based on property tax mills, $45.9 million of the $68.0 million would be deposited into the general fund and, if a 100 percent deduction were maintained, the entire $45.9 million would be deducted in the state school aid formula. If the state school aid deduction were 75 percent, $34.4 million would be deducted in the state school aid formula, allowing districts $11.5 million of the in lieu of property tax and local revenue deposited in the general fund which would not be deducted in the formula. If in lieu of property tax and local revenue were distributed based on the proportion of property tax mills levied and a 100 percent deduction were maintained, the difference between the $53.8 million deducted in the state school aid formula during the 2016-17 school year and the $45.9 million, that would have been deducted, or ($8 million) would represent additional cost to the state for 1 year ($16 million per biennium). If the formula deduction were 75 percent, the difference between the $53.8 million deducted in the state school aid formula during the 2016-17 school year and the $34.4 million, that would have been deducted, or ($19 million) would represent additional cost to the state for 1 year ($38 million per biennium). The department noted the estimated cost is based on the statewide average for mill levies assessed and the amounts would vary when each district is calculated separately and totaled statewide.

In lieu of property tax and local revenues that are not for a specific purpose are not distributed by mill levy, but are deposited in the general fund pursuant to DPI guidelines. In some counties, the in lieu of property tax and local revenue is identified for school districts, but in others the amount is not delineated and is included in the funding provided by property tax assessments. The department provided an analysis of the effects of distributing the various types of in lieu of property tax and local revenue in the same proportion as property tax mills on the state school aid of select school districts. The effects of a policy change regarding the deposit of in lieu of revenues and the percent deducted in the formula would vary by school district, depending on the types of in lieu of revenue each district receives and the percentage of property tax mill levies deposited into the general fund. The department reported counties deposit the various in lieu of property tax and local revenue differently and any change to the deduction of in lieu of property tax and local revenue deposited in other funds in the formula would require legislation, including legislation to require counties to report the deposit data.

The committee reviewed the effects on state school aid and property taxes of imputing in lieu of property tax and local revenue into taxable valuation in the state school aid formula. The Department of Public Instruction collaborated with the Tax Department to prepare an analysis for select school districts. Instead of deducting in lieu of property tax and local revenue from the state school aid formula, the department was asked to determine the effects of imputing the taxable valuation of the in lieu of property tax and local revenue and adding it to the actual taxable value of the district prior to calculating the deduction for 60 mills. The committee determined if in lieu of property tax and local revenue is imputed for purposes of the state school aid formula, the effects of the increased property valuation on local property tax assessment and the 12 percent limit on property tax increases also would have to be considered. The calculations provided by the department were an estimate of one way to implement the policy of imputing the in lieu of revenue into taxable valuation. The department reported there may be other methods, but establishing a base year was determined to be important. Because the level of funding per weighted student unit is set, any increase in property tax deducted in the formula will result in a decrease in the amount of state school aid paid by the state. The department reported that with the exception of hold harmless calculations and the 12 percent limit on annual increases, the current formula is easy to calculate, and imputing value from in lieu of property tax and local revenue would make the formula more complicated. In addition, because imputing value in the current formula would impact county levies, there was concern the calculation would require consistent application by county auditors, school superintendents, and school boards.

The committee also reviewed a report illustrating the impact of allocating, based on mill levies, a portion of fiscal year 2016-17 in lieu of property tax to school districts' sinking and interest funds and exempting the funding from the state school aid formula deduction. The Department of Public Instruction provided an analysis for school districts levying taxes for a sinking and interest fund. The analysis determined the sinking and interest levy as a percent of the school district's total levy and deducted that percentage of in lieu of property tax from total in lieu of property tax revenue before determining the amount of in lieu of property tax revenue deducted in the state school aid formula. Based on 2016-17 in lieu of property tax and district mill levies, if in lieu of property tax revenues were allocated to school district sinking and interest funds and excluded from the state school aid formula deduction, the cost of the state's share of state school aid would increase by approximately $1.23 million per year or $2.46 million per biennium. The cost of exempting a pro rata share of in lieu of property tax related to bonding would vary each year based on school district debt.

Rapid Enrollment Grants/On-Time Funding for State School Aid

The committee reviewed the use of rapid enrollment grants and the benefits and challenges of on-time funding for state school aid. School districts expressed concern that a separate appropriation for rapid enrollment grants, based on

forecasts, is subject to large variances in actual versus forecasted enrollments. Rapid enrollment grants, limited to $3 million each year of the 2017-19 biennium, were intended to provide $4,000 per eligible student for the 2017-18 school year, but instead provided approximately $2,350 per eligible student. When rapid enrollment grant calculations totaled $5.1 million for the 2017-18 school year, DPI was required to prorate the grant funds. Over 1,270 students qualified for the grant, 520 more than the 750 students estimated to calculate the appropriation.

The committee reviewed the benefits, challenges, and cost of transitioning the state school aid formula to on-time funding. On-time funding provides state school aid based on fall enrollment for each school year. The current state school aid formula provides funding based on the previous spring enrollment. State school aid based on fall enrollment would provide additional funding to districts experiencing increasing enrollment.

The committee considered a proposal to adjust the current funding formula for the greater of fall enrollment or the prior year's average daily membership. Full funding for on-time enrollment in the proposal provided support for growing districts, while maintaining the current model of paying for the prior year's student enrollment in school districts with declining enrollments. In addition to spring average daily membership, the current state school aid formula uses prior year property tax data to calculate state school aid. Assuming a hold harmless provision at 2017-18 school year levels, transitioning to "on-time" funding, using the higher of 2016-17 school year spring average daily membership or fall enrollment each year of the current biennium, would have resulted in an additional one-time state school aid funding cost of approximately $69 million in the 2017-19 biennium. The estimate is based on using property tax contributions from the prior year. If the formula were to use current year property tax contributions in each of the school years, the transition cost would be less. The Department of Public Instruction noted if the formula were transitioned to both "on-time" enrollment and "on-time" property tax contributions, the true state school aid formula payment amounts would not be known until property tax information becomes available in December or January. The department's "on-time" funding estimate provided schools with declining enrollment would be held harmless at the 2016-17 average daily membership levels. If all schools were moved to "on-time" funding for fall enrollment, the one-time cost would be less.

The committee considered options to fund the transition to on-time funding. The adjustment could be accomplished through a weighting factor applied to the qualifying number of students. The weighting factor could be set to provide $4,000 per eligible student and increased over time until the incremental cost of moving to full funding is negligible. A .40 weighting factor applied to students eligible under the rapid enrollment grant program would have increased state school aid by $5.1 million during the 2017-18 school year, or $2.1 million more than the $3 million provided for rapid enrollment grants. Funding provided for the rapid enrollment grant program ($6 million for the 2017-19 biennium) would be sufficient to implement a factor of approximately .25 per eligible student. Any variable, including the weighting factor, percentage deduction, number of students deducted, or any combination of variables, could be modified to achieve on-time funding over a number of years. Adjustments could be made to the factor and thresholds for payment over time until eventually all districts would be receiving on-time funding and the factor could be removed. The committee also considered continuing the rapid enrollment grant program. Rapid enrollment grant funding per student could be adjusted while continuing to require minimum student and percentage increases.

The committee explored possible funding sources for the one-time cost of transitioning the state school aid formula to on-time funding, including unspent 2017-19 biennium general fund appropriations, rapid enrollment grant funding, or a weighting factor. In addition, the committee considered ways to mitigate the impact of a transition to on-time funding of state school aid on school districts with declining enrollment, including the use of the greater of spring or fall enrollment or a 3-year rolling average enrollment. Formula provisions could be adopted to require school districts to use the spring or fall enrollment count for a number of years, instead of having the ability to change each year.

Cross-Border Tuition

The committee reviewed policies related to the cross-border education of nonresident students. Cross-border education with South Dakota is addressed in an agreement; however, there are no agreements with Montana or Minnesota. North Dakota pays to educate all the students along its border with South Dakota, including South Dakota students. South Dakota pays to educate all the students along their northern border, including North Dakota students. At the end of the school year there is an accounting of the cost of cross-border students. Traditionally DPI has paid South Dakota because North Dakota has sent more students to South Dakota schools than it has received from South Dakota. The payment varies depending on the number of North Dakota students educated in South Dakota compared to the number of South Dakota students educated in North Dakota. The payment to South Dakota is allocated to each North Dakota school district sending more students to South Dakota than it received. Districts do not receive foundation aid for students educated in South Dakota, but are required to pay for the net allocation. For a school district that received more students from South Dakota than were sent to South Dakota, there is no payment but the district receives the state school aid associated with those students.

The committee reviewed Section 15.1-29-01 related to Minnesota and Montana students. Pursuant to this section, a student attending an out-of-state school is deemed to be enrolled in the student's school district of residence for purposes

of determining average daily membership. School districts receive funding through the state school aid formula for North Dakota students attending Minnesota or Montana schools and it is the responsibility of the North Dakota school district to negotiate the tuition it will pay the out-of-state district. A North Dakota school district does not receive credit in its average daily membership for Minnesota and Montana students attending a North Dakota school, but negotiates tuition from the out-of-state school district sending the student. The tuition paid by the out-of-state school district for the nonresident child is subject to the 75 percent tuition deduction in the state school aid formula, leaving the district 25 percent of the tuition revenue to educate the student. Generally, North Dakota school districts accept only a few students from a neighboring state because of the 75 percent tuition deduction which causes financial shortfalls to educate more out-of-state students. When a neighboring out-of-state school closes and the number of students is significant, the 75 percent deduction can make absorbing the additional students too expensive for the North Dakota school district.

To address these concerns, the Department of Public Instruction suggested the state school aid formula could be changed to either:

- Exclude tuition related to out-of-state students from the local revenue deduction in the state school aid formula; or
- Include nonresident students in the North Dakota school district's average daily membership, while continuing to deduct 75 percent of the tuition related to the out-of-state students from the school district's state school aid payment.

The department has not collected data regarding the source of tuition payments, and the cost of any change to the formula for cross-border tuition is not known.

Integrated Formula Per Pupil Payment Rates

The committee reviewed the integrated formula per pupil payment rate. For the 2017-19 biennium, the integrated payment rate remained at $9,646 for each year of the biennium, the same as the 2nd year of the 2015-17 biennium. Stakeholders indicated increasing the per-pupil payment benefit is the most important funding challenge. Unlike other changes to the state school aid formula that may impact schools differently, all school districts benefit from a per-pupil payment increase.

Adult Learning Center Funding

The committee reviewed funding for adult learning centers. There are 11 adult learning centers in the state, including 8 regional centers and 3 satellite programs. Services also are provided in 6 correctional facilities across the state. The Department of Public Instruction reported some adult learning centers are located in career and technical education buildings and on college campuses. Approximately 40 percent of adult learners are English language learners. Based on the state's definition of 1 hour of service, 3,200 students have been served during fiscal year 2018. The state's GED program passing rate is 88 percent, the second highest in the country. Grant funding for adult education totals $5.13 million for the 2017-19 biennium, including $3.1 million from the general fund, $1.86 million of federal funds, and $170,000 of special funds from the displaced homemaker fund. Funding from the general fund for adult education grants was reduced from $4.11 million during the 2015-17 biennium. Federal funding also has decreased resulting in some adult learning centers closing. The department reported 88 percent of all federal and state funding provided to adult learning centers is used for salaries and benefits.

The Department of Public Instruction reported the Every Student Succeeds Act state plan includes the GED as a factor in graduation rates and a student dropping out of a traditional school may be encouraged to complete a GED at an adult learning center. The department anticipates an increase in the number of adult education students ages 16 through 21 and expressed concern regarding the capacity of adult learning centers to serve the additional students. State funding for a student dropping out of a traditional high school is prorated for the time spent in high school and does not follow the student to an adult learning center. The department reported a committee has been formed to review the possibility of providing supplemental funding to adult learning centers through the state school aid formula. The department suggested the state school aid formula could be changed to provide funding for adult education students between the ages of 16 and 21 who earn a GED and who are included in a school district's graduation rate. The proposed formula change would allow funding to follow students who drop out of the traditional K-12 education system to complete their education at an adult education center. The department suggested the funding provided through the state school aid formula would be in addition to the general fund appropriation for adult learning center grants. The department is considering a funding model similar to those used for special education and regional education associations. The department suggested funding could be based on a weighting factor and provided to school districts for distribution to adult learning centers. The department estimates the additional funding through the state school aid formula would total $850,000 per year. The funding provided through the state school aid formula combined with the current appropriation would total $2.4 million per year or $4.8 million per biennium for adult learning centers. Total funding would depend on the weighting factor, number of eligible students, and the number of hours eligible students attend class. The department reported the additional funding could be used to add staff and reopen centers that have closed.

Status of State School Aid - 2017-19 Biennium

The committee received reports from the Department of Public Instruction regarding student enrollment and the status of funding for state school aid, transportation grants, and special education contracts for the 2017-19 biennium.

To project future enrollment, DPI analyzes resident births and determines cohort survival rates by examining annual changes in enrollment by grade for the previous 2 years. In the years from 2007 to 2011, the annual increase in resident births ranged from 43 births to 202 births. In 2012, resident births increased by 838 from 2011 and since then resident births have increased at a lesser rate. Fall enrollment for the 2017-2018 school year totaled 108,945 students. Fall 2019 enrollment was projected to grow by 2,945 students; however, updated estimates are that the increase will be between 1,900 and 2,200 students.

The Department of Public Instruction estimates state school aid integrated formula payments will total $2,513,809,497 during the 2017-19 biennium, of which $488,444,521 will be provided through local property tax contributions, $116,018,096 will be provided through local "in lieu of" taxes and revenue contributions, and $1,909,346,880 will be provided by the state. In addition to the state's share of state school aid integrated formula payments, the appropriation for 2017-19 biennium integrated formula payments includes funding for costs related to child placement, regional education associations, and the gifted and talented program. The department estimates these expenditures will total $9,522,119, for a total of $1,918,868,999 charged to the integrated payment line item for the 2017-19 biennium, $16,835,164 less than appropriated. The department reported the state's share of funding for state school aid shifted from 54 percent in 2009 to 77 percent during the 2016-17 school year. Because there was no increase in the per pupil integrated payment rate during the 2017-19 biennium and property tax revenue is likely to increase, the state's share of state school aid funding is estimated to decrease to 75 percent.

The Department of Public Instruction estimates transportation grant expenditures will total $54.4 million during the 2017-19 biennium, $1 million less than appropriated.

The Department of Public Instruction estimates special education contract expenditures will total $22.3 million during the 2017-19 biennium, $3 million more than appropriated. Special education contract expenditures are more than estimated due to increases in the number of claims and in the cost of cases. In addition, because special education contract claims exceeded the 2015-17 biennium appropriation, the department used $2 million of 2017-19 special education contract authority to pay 2015-17 claims. In the past, the department has had the authority to receive funds from the Bank of North Dakota for any shortage in funding for state school aid. Due to the timing of state school aid payments, the department never has used Bank funding. As a result, the Legislative Assembly repealed this provision and directed the department to request a deficiency appropriation if necessary. As provided by the Legislative Assembly in 2017, the department anticipates requesting a deficiency appropriation of approximately $3 million from the general fund for 2017-19 biennium special education contracts.

The Department of Public Instruction anticipates excess funding in the integrated formula payments line item and the transportation grants line item totaling approximately $17.8 million from the general fund will not be spent. However, if the department is allowed to use excess foundation aid payment funding authority to pay special education contracts in excess of the department's 2017-19 biennium appropriation, unspent appropriation authority will total $14.8 million, and there would be no need for a deficiency appropriation.

Projected State School Aid - 2019-21 Biennium

Cost to Continue

The committee reviewed a preliminary estimate of funding required to continue current state school aid integrated formula payments during the 2019-21 biennium. The report, prepared by DPI, was based on:

- Average daily membership projected using a 3-year cohort survival routine with 2017-18 fall enrollment as the base year;
- Taxable valuations for fiscal years 2019-20 and 2020-21 projected based on the change from the 2016 to 2017 tax year limited to the state average;
- No change to formula minimum and maximum adjustments; and
- Other statistical data and weighting factors based on data supporting the 2017-18 payment year.

The Department of Public Instruction estimates the cost-to-continue integrated formula payments for an estimated 3,000 additional students each year of the 2019-21 biennium, including child placement, regional education associations and the gifted and talented program, will total $125.9 million during the 2019-21 biennium. Of this increase, an estimated $48.7 million will be provided locally through estimated increases in property tax contributions and "in lieu of" property tax revenue. The remaining $77.2 million of estimated cost-to-continue integrated formula payments will be provided by the state. In addition to funding required to continue integrated formula payments at the same level during the 2019-21

biennium, additional funding will be required to replace one-time funding provided for state school aid payments during the 2017-19 biennium, including $185 million from the foundation aid stabilization fund and $4.3 million from the state tuition fund. Funding available from the common schools trust fund is estimated to increase by $78.1 million and will offset a portion of the funding required to continue state aid and to replace one-time funding. The estimated net increase in funding required to continue integrated formula payments at the current level and to replace one-time funding from special funds will total approximately $188.4 million for the 2019-21 biennium.

The committee reviewed enrollment projections for the 2019-21 biennium. The Department of Public Instruction anticipates 2018-19 enrollment will be less than previously estimated. When fall 2018 enrollment is finalized, the department will recalculate the cost-to-continue state school aid. If actual 2018-19 fall enrollment is 900 students fewer than anticipated in the department's projections, the cost-to-continue state school aid in the 2019-21 biennium will be approximately $27 million less.

The committee also received a report from DPI regarding 2019-21 biennium funding concerns. Based on current formulas and policies related to transportation grants, rapid enrollment grants, and special education contracts, an additional $5.7 million may be needed to fully fund special education contracts and an additional $5 million may be needed if rapid enrollment grants are continued using criteria similar to the 2017-19 biennium. If transportation rates are not adjusted, the funding level would not change significantly for the 2019-21 biennium.

Estimated Cost of Integrated Formula Per Pupil Payment Rate Increases

The committee gathered information regarding the estimated cost of increasing the integrated formula per pupil payment rate during the 2019-21 biennium. The Department of Public Instruction reported with no other formula changes, a 1 percent increase in the integrated formula payment each year of the 2019-21 biennium resulting in integrated formula payment rates of $9,742 and $9,839 during the 1st and 2nd year of the biennium respectively, would cost approximately $31 million. With no other formula changes, a 2 percent increase in the integrated formula payment each year of the 2019-21 biennium, resulting in integrated formula payment rates of $9,839 and $10,036 during the 1st and 2nd year of the biennium respectively, would cost approximately $62.9 million. These increases would be in addition to the estimated $77.2 million cost-to-continue state school aid related to increased enrollment.

State School Aid - 2021-23 Biennium Projected

The committee reviewed information regarding the cost-to-continue state school aid during the 2021-23 biennium. The Department of Public Instruction reported based on current weighting factors and minimum and maximum adjustments, no increase in the integrated formula payment of $9,646, and an approximate 3.5 percent increase in property values, the cost-to-continue state school aid due to population growth during the 2021-23 biennium is estimated to total $125.5 million. The increase is based on enrollment growth of approximately 4,000 students each year of the 2021-23 biennium. The department does not expect the significant increases in enrollment to continue beyond 2023 because the student influx related to the oil boom will begin graduating. If the integrated formula payment is increased during the 2019-21 biennium, the cost to continue the increases in the 2021-23 biennium is approximately $13 million for each percentage increase provided in the 2019-21 biennium. If property tax growth does not meet the 3.5 percent estimate included in the department's projections, the state's cost would be more.

Committee Recommendation

The committee makes no recommendation related to its study of the state school aid funding formula.

OTHER COMMITTEE RESPONSIBILITIES

The committee received, pursuant to Section 15.1-02-09, a report from the SPI regarding the **financial condition of schools**. The annual report is published in February for the preceding school year and includes information regarding mill levy rates, taxable valuation, revenues, expenditures, student enrollment, average daily membership, average cost per pupil, teachers, average salaries, and number of graduates.

The committee received, pursuant to Section 15.1-02-13, a report from the SPI regarding **school district employee compensation**. The report is based on data reported by school districts for school years ending in June of 2015, 2016, and 2017. The report includes teachers, administrators, and other district employees, but does not include part-time teachers. Administrators include principals, superintendents, directors, assistant principals, assistant or deputy superintendents, administrative assistants, and assistant directors. The average base salary for administrators increased from $90,598 to $96,372, or 6.37 percent, from 2015 to 2017. Teachers include coordinators, library media specialists, pupil personnel, school counselors, school psychologists, speech and language pathologists, supervisors, and instructional programmers. The average base salary for teachers increased 6.4 percent, from $50,057 to $53,261, over the same period. The number of administrators statewide increased from 603 in 2015 to 625 in 2017, while the number of teachers increased from 8,691 to 8,936 during the same period.

The committee, pursuant to Senate Bill No. 2037 (2017), received a report from the SPI regarding the use of **teacher loan forgiveness funds**. The Superintendent reported $2,103,393 from the general fund was appropriated to the North Dakota University System for the teacher shortage loan forgiveness program during the 2017-19 biennium. The University System and the SPI collaborated to implement the program. Policies and procedures for the program were established and University System procedure 508.1.2 relating to the teacher shortage loan forgiveness program is posted on the University System website. Loan forgiveness benefits are allowed for recruiting for a vacant position or to retain a teacher in a position that is filled and school districts were to apply for the position regardless of whether it was filled. The maximum benefit is 4 years and the school district determines which teacher will receive the loan forgiveness benefits.

To determine critical need and shortage areas, the SPI reviewed alternative and provisional licensing through the Education Standards and Practices Board and district surveys. The Superintendent identified critical need areas for the 2017-18 school year (in order of priority) as science, business and office technology, agriculture education, technology and engineering education, and computer science. In addition, the department identified 13 shortage areas. Applications were made available in January 2018 and due April 15th. Districts were allowed to apply after the deadline, but applications submitted by April 15th were given priority. Under the new program, school districts are responsible for the applications and could apply for up to two teaching positions. Districts were allowed to determine which positions were hardest to fill and to submit those positions for loan repayment under the program. Elementary and science teachers were the most applied for positions. When determining which positions to approve for funding, the SPI and the University System considered whether the position qualified as a critical need or shortage area, whether the position was rural or urban, and the amount of funding available. Urban districts could apply only for teaching positions in the critical need areas.

The Superintendent of Public Instruction reported loan forgiveness amounts could range from $3,000 to $6,500 per year for up to 4 years depending on whether the district was rural or nonrural and if the teaching position was in a critical need area or a shortage area. Of a total of 227 districts (public and nonpublic), 170 districts applied. The Superintendent reported 149 rural districts applied for 295 positions, of which 270 positions were approved at a cost of $1,389,000. The Superintendent reported 21 urban districts applied for 41 positions, none of which were approved. The Superintendent reported 183 positions were approved for the $4,500-per-year award and 87 positions were approved for the $6,500-per-year award. Because the awards are for a 4-year period, unless additional appropriations are provided, no new positions will be approved. The Superintendent reported to fully fund a program that provides each district with two teaching position awards at the highest level, an estimated $5.2 million would be needed each biennium.

In addition to the report from the SPI, the committee received a report regarding the results of a school district survey related to the teacher shortage loan forgiveness program. Stakeholders reported 80 districts responded to the survey. Over 50 percent of the districts responding indicated the scholarships were used to retain teachers. In schools responding to the survey, the new program resulted in a loss of benefits for 186 teachers receiving awards under the previous loan program. Stakeholders expressed concern regarding the timing of the application. The April application deadline is prior to districts knowing which teaching positions will need to be filled.

OTHER REPORTS AND INFORMATION RECEIVED BY THE COMMITTEE

Medicaid-Covered Services Provided by School Districts

The committee received a report from the Department of Human Services regarding policy changes allowing expanded reimbursement for Medicaid-covered services provided by school districts. Pursuant to the federal Individuals with Disabilities Education Act, the Department of Human Services is responsible for the payment of services for Medicaid-eligible children who receive Medicaid-covered services described in the child's Individualized Education Program. The Department of Public Instruction receives a monthly Medicaid payment report from the Department of Human Services for Medicaid-covered services included in a student's Individualized Education Program and provided by the school district. The Department of Public Instruction withholds the 50 percent of the state share Medicaid payment from the school district's state aid payment. If the district's state aid payment is not sufficient to cover the Medicaid withholding, the school district must pay the difference to DPI. The amount withheld is certified and paid to the Department of Human Services. Approximately $1.7 million is withheld and remitted to the Department of Human Services each biennium. Most of the state match is made by the offset to state school aid. However, some districts are providing services in schools, but claims for reimbursement are not made through the school. The match for services billed in this manner is not included in the match certified by DPI, resulting in the use of state general fund dollars for the state match. Covered services include physical, occupational, and speech-language pathology therapies; audiology; behavioral health; skilled nursing services provided to children with complex medical needs; transportation to and from Individualized Education Program services from school; and applied behavior analysis.

The committee also received a report regarding regional education association collaboration with special education units to develop a Medicaid billing consortium. Verifying Medicaid eligibility for students is difficult and a number of special education units either were not maximizing Medicaid reimbursements or not submitting for Medicaid

reimbursement. A regional education association recruited partners, invested in software, and provided training and support to establish and expand the consortium. The consortium includes 12 special education units, including 67 school districts. The regional education association assists and supports special education units accessing Medicaid reimbursement for services the units are required to provide.

Other Reports Received by the Committee

In addition to the committee's other responsibilities, the committee received other reports, including reports from the:

- Superintendent of Public Instruction regarding a summary of the various entities responsible for the delivery and administration of elementary and secondary education in the state;
- Governor's office regarding the Governor's elementary and secondary education initiative, including the Governor's Summit on Innovative Education;
- Indian Affairs Commission and the SPI regarding the elementary and secondary education funding system for Native American children and achievement challenges;
- Education Commission of the States regarding a comparison of the state's elementary and secondary education funding and outcomes to the national average and bordering states;
- Department of Public Instruction regarding the status of the innovative education program established pursuant to Senate Bill No. 2186 (2017);
- Department of Public Instruction regarding the student contract system used to reimburse school districts for high-cost students and for students in placement for reasons other than education;
- Department of Public Instruction regarding the increasing cost and number of special education contracts;
- Tax Department regarding property tax budget deadlines for school district preliminary budgets and budget adjustments;
- Regional education associations regarding course offerings and the structure and funding of regional education associations;
- Great Western Network Interactive Television regarding the delivery of K-12 video distance learning in the state and an interactive television distance learning consortium;
- North Dakota Center for Distance Education regarding the center's role in the delivery of elementary and secondary education in the state and SmartLab tours;
- Department of Career and Technical Education regarding the role of career and technical education in the delivery of elementary and secondary education in the state;
- North Dakota Small Organized Schools regarding transportation challenges and funding;
- North Dakota State College of Science regarding a strategic plan for the Career Workforce Academy; and
- North Dakota Council of Educational Leaders regarding a comparison of resources across school districts and other items including; the impact of funding formula changes, funding for school districts incurring tuition costs for students placed in summer programs outside the district, property tax limits, school safety, behavioral and mental health services in schools, funding for an administrator mentor program, and the cost to school districts of bus driver physicals.

EDUCATION POLICY COMMITTEE

The Education Policy Committee was assigned two studies:

- Section 23 of House Bill No. 1013 (2017) directed a study of the feasibility and desirability of combining services for any and all English language learner programs, distance learning programs, regional education associations, teacher center networks, adult learning centers, career and technical education programs, education technology services, continuing education for counselors, educational leadership, and the teacher mentor program.
- Section 5 of House Bill No. 1324 (2017) directed a study of entities that deliver K-12 professional development services, distance curriculum, support for schools in achieving school improvement goals, assistance with analysis and interpretation of student achievement data, and technology support services. The study directive required a focus on the funding, governance, nature, scope, and quality of services provided to schools. The study directive also required a focus on the duplication of services across entities and the accountability for expenditures. The study directive required identification of efficiencies and the feasibility and desirability of consolidating services.

The committee was directed to receive the following reports from the Superintendent of Public Instruction:

- A report regarding requests from a school or school district for a waiver of any rule governing the accreditation of schools.
- A report regarding waivers applications under North Dakota Century Code (NDCC) Section 15.1-06-08.1.
- An annual report regarding the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules, and a review of evaluation date results.
- A report regarding 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.

The committee also was directed to receive a report from the Education Standards and Practices Board (ESPB) regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board.

Committee members were Senators Erin Oban (Chairman), Kyle Davison, Richard Marcellais, Donald Schaible, and Shawn Vedaa and Representatives Rich S. Becker, Ron Guggisberg, Mary Johnson, Donald Longmuir, Andrew Marschall, David Monson, Bill Oliver, Mark S. Owens, Matthew Ruby, and Cynthia Schreiber-Beck.

Due to similarities in the nature and scope of the two assigned studies, the committee elected to combine the studies into one comprehensive study.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

EDUCATION ENTITIES PROVIDING SERVICES TO SCHOOLS IN THE STATE

In North Dakota, educational entities that provide K-12 services are separate stand-alone bodies, and each entity has its own governance model and no clear shared goals. The studies were proposed to address concerns that the current model of providing K-12 services has led to the duplication of services among entities, which has led to inefficiencies in the overall delivery of services. The committee began its work by receiving information from those education entities, including information related to the budget, governance, services offered, quality assurances, any duplication of services the entities provide in conjunction with other entities, and potential areas to create efficiencies.

Background

Constitutional and Statutorily Created Entities

Section 2 of Article V of the Constitution of North Dakota includes the Superintendent of Public Instruction among the officials to be elected by the voters of the state. That section provides the duties and powers of the Superintendent of Public Instruction must be prescribed by law. Section 1 of Article VIII of the Constitution of North Dakota requires the Legislative Assembly to provide for a system of public schools open to all children of the state. Section 2 of Article VIII of the Constitution of North Dakota requires the system of public schools to begin with primary education and extend through all grades. North Dakota Century Code Chapter 15.1-03 establishes the Department of Public Instruction (DPI) to be administered by the Superintendent of Public Instruction. The general duties of the Superintendent of Public Instruction are established under NDCC Chapter 15.1-02. The Superintendent of Public Instruction has numerous statutory duties and responsibilities, including supervising elementary and secondary education in the state, the establishment and maintenance of schools, the development of course content standards, the assessment of students,

determining the outcome of appeals regarding education matters, and directing school district annexation, reorganization, and dissolution.

There are a number of entities under the supervision of DPI, including the State Library under NDCC Chapter 54-24, the School for the Blind under NDCC Chapter 25-06, the School for the Deaf under NDCC Chapter 25-07, and special education units under NDCC Chapters 15.1-32 and 15.1-33.

In addition to DPI, there are a number of legislatively created entities that provide K-12 services in the state, including regional education associations (REAs), ESPB, and the Department of Career and Technical Education (CTE).

The Education Standards and Practices Board is established in NDCC Chapter 15.1-13, and is primarily responsible for supervising the licensure of teachers in the state, setting standards for and approving teacher preparation programs, making recommendations for the inservice education of individuals engaged in the profession of teaching, and issuing major equivalency and minor equivalency endorsements. Under NDCC Section 15.1-13-02, the board consists of 10 members appointed by the Governor. In addition to statutory provisions, ESPB has adopted administrative rules under North Dakota Administrative Code Title 67.1 which detail the licensing requirements for teachers, professional practices, and professional development requirements.

The Department of Career and Technical Education was established under NDCC Chapter 15-20.1. The purposes of the department include formulating plans for the promotion of career and technical education in subjects essential and integral to the public school system of education in the state, providing for the preparation of teachers, conducting studies and investigations relating to career and technical education, promoting and aiding in the establishment of schools, departments, and classes related to career and technical education, and prescribing the qualifications and providing for the certification of career and technical education teachers, directors, and supervisors.

Regional education associations are authorized under NDCC Chapter 15.1-09.1. Regional education associations are a group of school districts that have entered a joint powers agreement to coordinate and facilitate professional development activities for teachers and administrators employed by the member school districts; supplement technology support services; assist with achieving school improvement goals identified by the Superintendent of Public Instruction; assist with the collection, analysis, and interpretation of student achievement data; and assist with the expansion and enrichment of curricular offerings. Under NDCC Section 15.1-09.1-02, the Superintendent of Public Instruction must review the joint powers agreement and verify a specific set of criteria have been met in order for the school districts under the joint powers agreement to be designated as an REA. There are eight REAs in the state.

Under NDCC Section 54-59-03, the Governor is responsible for appointing the Chief Information Officer, who administers the Information Technology Department (ITD). North Dakota Century Code Section 54-59-02 states ITD has the "responsibility for all wide area network services planning, selection, and implementation for all state agencies, including institutions under the control of the board of higher education, counties, cities, and school districts in the state." The section also states the services include services necessary to transmit voice, data, or video outside the county, city, or school district and ITD is responsible for support services, host software development, statewide communication services, standards for providing information to other state agencies and the public through the Internet, technology planning, process redesign, and quality assurance.

North Dakota Century Code Sections 54-59-17 and 54-59-18 establish the Educational Technology Council, the council's membership, and the council's powers and duties. The council is responsible for developing and coordinating educational technology initiatives for elementary and secondary education. While not specifically statutorily referenced, EduTech was created under the umbrella of the Educational Technology Council within ITD to strengthen education technology tools and support and training for educators. EduTech offers services including antivirus software to schools, email access, online surveys, training workshops, videoconferencing, and web hosting. The Educational Technology Council also is responsible for hiring the Director for the North Dakota Center for Distance Education.

North Dakota Century Code Chapter 15-19 relates to distance education and establishes the North Dakota Center for Distance Education for the purpose of providing distance education to students. The students are not required to be residents of the state to be eligible to receive services. The center provides a curriculum determined proper and suitable by the Superintendent of Public Instruction. All programs and activities of the center are provided for under the supervision of the Educational Technology Council.

Nongovernmental Entities

There are numerous entities not under government control which generally exist to advocate and work to influence particular causes and which provide professional educational services in the state. Among these entities are the North Dakota Science, Technology, Engineering, and Math Network; North Dakota United; the North Dakota School Boards

Association; the North Dakota Council of Educational Leaders; the Anne Carlsen Center; the American Indian Education Association; the State Association of Non-Public Schools; and the North Dakota Association of Technology Leaders.

Testimony and Committee Considerations

Department of Public Instruction

The committee received information from a representative of DPI regarding the budget, governance, services, quality assurance, duplication of services, and efficiencies of the department. The Superintendent of Public Instruction oversees 175 operational public school districts in the state. The Department of Public Instruction serves 373 school buildings, 5 Bureau of Indian Education schools, 53 non-public schools, and 4 state institutions. There are over 106,000 public school students in the state, 6,500 non-public school students, 1,500 Bureau of Indian Education students, and 2,800 home-educated students. The department's budget of $2,333,849,760 for the 2017-19 biennium, which includes general funds, federal funds, and special funds, is allocated as follows: $1,935,204,163 to schools as state aid; $266,532,705 for grants to schools; $55,400,000 for transportation; $30,165,005 for operating expenses; $19,300,000 for special education contracts; and $17,439,176 is for salaries and fringe benefits.

There are 14 divisions and offices within DPI to help fulfill the superintendent's constitutional and statutory duties and responsibilities. The department measures the quality of services provided through a number of indicators, including assessment results, graduation rates, remediation rates, and post-secondary enrollment. In an attempt to eliminate inefficiencies, the department reported it has reduced the number of full-time equivalent positions from 99 in 2013, to 89 in 2018 through consolidation of job responsibilities. The department also reported it has eliminated the need to lease office space by consolidating all operating units into the Capitol, and in 2016 hired outside consultants to examine the department's business operations for strengths and weaknesses. The results of the consultation indicated the need for a strategic state vision for K-12 education, with alignment to the vision by all education entities in the state. As a result of the findings of the outside consultants, the department hired Greenway Strategy Group to lead and develop a strategic vision for education in the state with the help of a steering committee comprised of representatives of the education service provider entities in the state.

According to the testimony, the strategic steering committee analyzed stakeholder interviews, student input, and performance data following the K-12 environmental scan. The steering committee also defined the vision, mission, and long-term outcomes for education in the state, and developed strategic themes. The department developed strategic initiatives to meet the themes, organized action plans to accomplish the initiatives, and created monitoring and review processes.

Department of Career and Technical Education

The committee received information from a representative of CTE regarding the budget, governance, services, quality assurance, duplication of services, and efficiencies of the department. It was reported CTE's budget of $41.3 million for the 2017-19 biennium is allocated as follows: $23.1 million, plus $5.6 million of federal funding, for education services to grades 9 through 12 and secondary education schools; $300,000 for services to elementary and middle schools; $2.3 million is for 2-year campuses with an additional $2.5 million in federal funding; $1.8 million for the adult farm management program; and $4.9 million for department salary and operating expenses, with an additional $800,000 in federal funding. More than 20,000 students are enrolled in career and technical education programs in the state.

The Department of Career and Technical Education serves school districts and 10 area centers, students, teachers, career development counselors, 2-year campuses, public and tribal schools, farmers and ranchers, and business and industry in the state. The services provided by CTE include reviewing and evaluating career and technical education programs in the state, approving new programs and coursework, providing technical assistance, helping to determine equipment and facility needs, providing performance data on students, making curriculum recommendations, providing curriculum framework, holding academic standards meetings, providing career planning tools and training, providing teacher professional development, and offering alternative teacher certification. The department assures the quality of services provided through post school evaluation questionnaires, post conference surveys, quarterly career and technical education administrator meetings, and broad membership within the department's board. Every school in the state with a career and technical education program is evaluated once every 5 years.

Education Standards and Practices Board

The committee received information from a representative of ESPB regarding the budget, governance, services, quality assurance, duplication of services, and efficiencies of ESPB. The Education Standards and Practices Board serves all licensed teachers in the state by creating licensing standards, issuing licenses, creating educator program approval and accreditation standards, creating professional conduct standards with the ability to issue sanctions on licenses, and providing professional development for teachers. The board is composed of 11 members with a combination of public and private school teachers, school board members, school administrators, a dean of a college of education, and the Superintendent of Public Instruction as an ex-officio member. The board office has a five-person staff. The board, which does not receive any direct funding from the state, generates budget income through teacher

licensure fees. A teacher license costs between $50 to $150 plus application fees, depending on the type of license desired. The 2017-18 budget for the board is $811,000.

The Education Standards and Practices Board assures the quality of services provided through a customer satisfaction survey given to stakeholders. The board makes adjustments to services provided based on feedback received. According to the testimony, ESPB is not aware of any duplication of services, as ESPB is the only teacher licensure entity in the state. It was noted ESPB operates efficiently with its minimal staff and budget income derived solely from license fees. The majority of states have licensing boards within the state's department of education. North Dakota; however, has a separate independent licensing board.

Regional Education Associations

The committee received information from a representative representing the eight REAs in the state regarding the budget, governance, services, quality assurance, duplication of services, and efficiencies of regional education associations. According to the testimony, REAs are developed to impact students, teachers, and school supports and to collaborate with school districts on a regional basis to respond to needs. The regional education associations provide high-quality professional development; innovative and shared learning opportunities for schools, educators, and students; and support for statewide education initiatives and policy objectives. It was reported the REAs had a combined budget of $28,449,337 for the 2015-17 biennium. Of the budget, 23 percent was state agency funding, 27 percent was federal funding, and 50 percent was private and local funding. The per student cost of services provided by the REAs is approximately $118.

The testimony indicated REAs create efficiencies by capitalizing on relationships with schools, providing immediate access based on regional needs, collaborating and providing cost-sharing, sharing staff among schools, being creative and having flexible problem-solving capabilities, providing school improvement and data analysis assistance to schools, and being structured to communicate quickly and efficiently. The regional education associations also create efficiencies by collaborating to provide certain services with other agencies and entities in an interagency effort. The efforts include helping to offer virtual career and technical education centers, behavioral health and suicide prevention with the State Department of Health, and pre-service teacher training with the North Dakota University System.

The regional education associations assure the quality of services provided through teacher and student surveys. Ninety-three percent of public and nonpublic school districts in the state utilize REA services, and those school districts represent 98 percent of students in the state.

According to the testimony, all eight REAs are conducting a "needs" analysis. School districts were requested to prioritize the five statutory duties of REAs. It was reported school districts consistently indicated after professional development services, school improvement was the second priority, and the remaining duties were a mix of priorities depending on the school district. The school districts also requested assistance with curriculum assessment and instruction, behavioral issues, and innovative approaches from the REAs. It also was reported there have been ongoing services and merger discussions between REAs. It was noted, however, schools have made it clear that if a merger is to occur, the merger must be beneficial to the schools as well as the REAs. Finally, it was reported REAs are working to obtain certain grants from DPI for professional development services for schools.

Educational Technology Council and Center for Distance Education

The committee received information from representatives of the Educational Technology Council, including EduTech, and the Center for Distance Education regarding the budget, governance, services, quality assurance, duplication of services, and efficiencies of the entities. The Educational Technology Council provides governance for both EduTech and the Center for Distance Education. The Educational Technology Council budget is $1,121,472 for the 2017-19 biennium, which includes funding from general funds, special funds, and federal funds, is allocated as follows: $432,000 for salaries and wages; $88,000 for operating expenses; and $600,000 for grants. EduTech's budget of $9,752,767 for the biennium, which consists of general and special funds, is allocated as follows: $5.9 million for salaries and wages; $3.8 million for operating expenses; and $35,000 for equipment costs.

EduTech services include providing support and training for PowerSchool users, etranscripts, e-rate filings and compliance, information technology security, awareness, training, and coordination, professional development for educators, information technology services and support, and professional learning and outreach. According to the testimony, EduTech assures the quality of the services provided through annual surveys and results, school visits, training evaluations, requests, and review of help desk tickets. Survey response rates show consistent customer satisfaction and continuously improving services. To create efficiencies, many EduTech services are provided at no or little cost to schools.

The Center for Distance Education's budget of $7.7 million dollars for the 2017-19 biennium, which consists of general funds, special funds, and a Bush Foundation Community Innovation Grant, is allocated as follows: $3.7 million for teacher salaries; $1.6 million for support salaries; $800,000 for curriculum development; $669,000 for information technology infrastructure; and $856,000 for operational expenses. The center provides distance education by identifying the needs of its students and parents, managing expectations of its students, establishing processes to meet expectations, assigning ownership of the processes, mapping the processes, establishing performance measures, continually improving and innovating, and receiving and providing feedback to stakeholders. The center, which delivers courses to all school districts in the state, has a course completion rate of 96 percent. The center has a customer satisfaction rating of 3.65 out of 4. The center, which delivers over 11,000 courses over the course of a biennium, offers 320 courses to students, including AP courses, advanced courses, dual-credit courses, technical courses, and core courses. The center reported it does not have duplication of services with other education service providers in the state.

North Dakota Boys and Girls Ranch

The committee received information from representatives of the Dakota Boys and Girls Ranch regarding logistics and issues related to working with K-12 education entities. Dakota Boys and Girls Ranch, which is a residential treatment and educational center for children and their families, has treatment centers in Minot, Bismarck, and Fargo. Each of the three campuses have an onsite education center called Dakota Memorial School which serves children and young adults.

According to the testimony, the school staff work closely with the treatment staff to provide a fully integrated education and treatment environment. The school serves 100 residential and day program students daily. The average length of stay for residential students is 223 days. The school supports students with complex learning needs due to psychiatric, behavioral, and trauma issues.

The testimony indicated approximately 67 percent of students who enter Dakota Boys and Girls Ranch are one to two grade levels behind academically. Part of the school's strategy is to educate the sending schools so when a student transitions back to the sending school, the student can continue to progress without dealing with regression and setbacks. It was noted working with so many different sending school districts requires help and coordination from state-level education entities. According to the testimony, Dakota Boys and Girls Ranch depends on REAs for assistance with professional development for teachers. The regional education associations, which have different approaches to professional development, results in some disparity and lack of uniformity and consistency in the services provided to each of the three Dakota Boys and Girls Ranch locations. The sending school district pays tuition for a student who comes to Dakota Boys and Girls Ranch. If a student comes to Dakota Boys and Girls Ranch with special education needs, state special education funds can be utilized, but the amount of available funds can vary from district to district. It was noted the majority of funding for the Dakota Boys and Girls Ranch is donor based.

English Learner Topics

The committee received information from a representative of DPI regarding funding, accountability, data, and outcomes of English learner programs. All school districts are required to have an English learner policy for providing alternative language services in compliance with NDCC Chapter 15.1-38. English language development standards and assessments in North Dakota have been created through a collaboration of states, WIDA, and the Center for Applied Linguistics. It was reported Spanish is consistently the most represented language in the state among English language learners.

A standard setting was completed for the English language proficiency assessment in the summer of 2016 which revised the proficiency levels, making the levels more rigorous, resulting in fewer students reaching attainment (exiting the program) in 2017. It was reported the results for 2018 improved, but not to the previous level before the changes were made. The Department of Public Instruction reported it is incorporating additional professional development to assist schools and districts in addressing this issue.

According to the testimony, the trajectory for an English learner is predicated on the level of support the individual receives. There is not adequate data to track and guarantee every English learner in every district is receiving the level of support required to maintain the individual's trajectory. The testimony noted DPI assists districts by providing technical assistance, holding regular English learner coordinator meetings to share information and best practices, and providing year-round professional development. It was noted North Dakota is doing quite well overall with English learners relative to other states, and is getting better every year. Rural areas of the state have more difficulties than the urban areas due primarily to a lack of resources. English learners have access to a majority of the other K-12 education entities providing services to non-English learners, such as career and technical education. It was reported there is good communication and collaboration exists between the entities and English learner programs.

The committee also received information from an English learner teacher. As English learner students become proficient, the testimony indicated, students can move into mainstream classes with non-English learner students. Depending on the level of proficiency in each subject, some students may be in English learner classes for some

subjects, and mainstream classes for others. It was noted if there are no other students in the school who speak the same language and can help each other, technology can be a helpful tool to help translate between student and teacher.

Special Education Topics

The committee received information from a representative of DPI regarding special education units, funding sources, data, and collaboration efforts between special education units and K-12 education entities. The Individuals with Disabilities Education Act (IDEA) is a federal law with the major purpose of ensuring all children with disabilities have access to a free appropriate public education that emphasizes special education and related services designed to meet the unique needs of the children and prepare the children for further education, employment, and independent living. The role of the state special education office is to assure children and families of children with disabilities are receiving a free appropriate public education. The department reports it accomplishes this goal through general supervision, monitoring, and providing technical assistance. As of December 1, 2017, 15,175 children with disabilities were being served on an individualized education program (IEP), approximately 14 percent of the total public school enrollment. Students with specific learning disabilities are the largest disability category being served with the categories of students with speech impairment and non-categorical delay as the second and third largest. The department reported the trend data over the last 8 years indicates a steady increase in the number of students being served on IEPs with the largest increase in trend data of students being served on IEPs is attributable to the increase in the number of students diagnosed as being on the autism spectrum.

The federal government provides funding through two types of grants to states and territories under IDEA Part B, which then flow funds to local education agencies as subgrants. Every eligible state or territory receives an annual federal grant under IDEA, called a section 611 grant, to support special education and related services for children ages 3 through 21. All 50 states also receive section 619 grants, which are IDEA funds to support the education of children ages 3 through 5.

The North Dakota Century Code requires each special education unit to maintain an organizational plan on file with the Superintendent of Public Instruction. The organizational plan identifies the representation on the Special Education Unit Board and the general functioning rules of the board. The Special Education Unit Board also is required to prepare an annual plan on behalf of its participating school districts, regarding the provision of special education and related services. Many of the multi-district special education units include rural school districts. According to the testimony, each board is required to determine how it will distribute state and federal funds to each of the participating school districts within its unit. The Special Education Unit Board and its director are required to assure all children with disabilities residing in their unit are receiving a free appropriate public education.

The report indicated state funding is distributed to the school districts, while federal funding is distributed to the special education units. If the school district hires and pays the staff, the special education units contribute to help alleviate the costs. It was noted state law does not prevent an arrangement from occurring in which school districts and special education units contribute funding to each other to help pay for the cost of special education services and staff. It was reported staffing special education units can be challenging, especially in rural areas. The report indicated many districts and units are exploring telecommunication as a means of overcoming those challenges. It was noted there are not enough special education teaching students coming out of colleges to meet the demand.

The committee received information from a representative of special education units regarding outcomes, challenges, and emerging themes of special education units. Outcomes for special education units often are measured by DPI through federally guided indicators as well as performance indicators established through leadership within individual special education units. Performance outcomes may be created by the grant funding received through local, state, or federal grant opportunities. Each special education unit works with its local school districts to analyze student data to organize instructional supports that will create positive outcomes for students.

According to the testimony, the greatest challenge special education units and school districts face on an annual basis is finding high-quality, certified and noncertified staff to fill the vacant special education positions. A rapidly growing challenge facing school districts and special education units is the students with disabilities which require very intense and unique services, especially in the area of behavioral or mental health supports. The specialization necessary to meet the needs of the students places a high demand on staff. Medicaid and state reimbursement for high-cost students create financial challenges for schools. It was noted districts and special education units are faced with state-imposed limitations on the Medicaid services that can be claimed for reimbursement.

Adult Education Topics

The committee received information from a representative of DPI regarding adult education topics. The department provides free programs to help individuals over the age of 16 obtain basic academic and educational skills to be productive postsecondary students, workers, family members, and citizens. Adult education provides a second opportunity for learners committed to improving academic skills and credentials. Services available in each adult learning

center include reading and writing; science; social studies; math; digital literacy skills; English language acquisition for adults who are unable to read, speak, or write English; workplace and career planning and readiness; and GED preparation and testing. Instruction is delivered classroom style, in small groups, and even one on one to meet student needs. Instruction also is designed for foreign-born adults who wish to become United States citizens.

It was reported, on a per capita basis, North Dakota has one of the lowest funding levels relative to other states for adult education. Despite the low funding, North Dakota continues to perform well in adult education. Federal funding is not based on the success of the program, but is based on need and North Dakota does not have the numbers to compete with states with much larger populations and a greater number of people with adult education needs. According to the testimony, in certain parts of the state adult education programs are unable to accept more students based on the level of funding. It was noted some adult education programs have wait lists.

The committee received information from a representative of Job Service North Dakota regarding issues and redundancies among adult education, vocational rehabilitation, Job Service North Dakota, the Department of Labor and Human Rights, and the Department of Commerce. As of May 2018, North Dakota had an unemployment rate of 2.6 percent and the national unemployment rate was 3.9 percent. North Dakota has the highest labor market participation rate of any state, meaning more North Dakotans are working relative to the entire population of the state than any other state. Job Service North Dakota reported it has over 14,000 job openings; however, because employers are not required to report openings to Job Service North Dakota, there likely are many more openings. The numbers indicated a workforce shortage in the state.

The Workforce Development Council reported it has developed five emerging themes related to employment shortages in the state. First, the state has a shortage in nursing and "health care tech" workers. Secondly, the state has a middle skills gap that could be addressed in part through adult education services. Thirdly, North Dakota has an opportunity to become a leader in job creation for the technology and cyber education sectors. Fourth, addressing populations that have barriers to employment is necessary. Based on the population in the state, sufficient workers are available to fill open positions primarily in the 16 to 19 year old age group and individuals reaching the age of retirement. The vast majority of individuals between those two groups are working already. When approached from a non-age-based perspective, individuals in tribal communities, individuals with disabilities, and new Americans are the demographics with higher unemployment rates which could be available to fill openings. The Workforce Development Council reported it has been exploring ways to engage these populations, enhance relationships, and help address the need to fill open positions. The fifth theme is the coordination of resources.

Testimony reported multiple programs are in place across several agencies related to workforce development which perform similar functions. The programs include the Department of Human Services vocational rehabilitation program, the Senior Community Service Employment Program, the Department of Commerce Workforce Division, and DPI adult education units. Each of these agencies and programs operate independently from one another. It was noted these agencies and programs are prime examples of areas the state may want to evaluate to reduce and consolidate resources in a central location, while improving experiences and helping individuals find employment.

Early Childhood Education

The committee received information from a representative of the Department of Commerce regarding the department's role in allocating funds for the early childhood education program.

Innovative Education Processes and Teaching Methods

The committee received information from representatives of schools in the state regarding the implementation of new innovative processes, teaching methods, and opportunities to create efficiencies in education through the use of innovative processes and teaching methods. The state's purpose for creating an Innovative Education Program was to allow schools to have individualized missions, goals, and objectives through a comprehensive plan that helps meet the needs of students. Participation in the Innovative Education Program is a two-step process. First, schools apply for the Innovative Education Program Planning Proposal. During this year-long planning journey, schools develop a comprehensive implementation plan and work with DPI to ensure the long-term viability of the proposal. Schools must explain the rationale and the comprehensive visioning, justify the reasoning for requesting the Innovative Education Program, and how the school plans to involve all stakeholders in the process. After the initial year of planning, the school may submit a comprehensive Innovative Education Implementation Application, which may be approved for up to 5 years.

School Reporting Efficiencies and Requirements

The committee received information from a representative of the Education Technology Council regarding school reporting efficiencies. A directive in Section 28 of Senate Bill No. 2031 (2015) requires a committee, chaired by the Superintendent of Public Instruction to, be assembled to ". . . review statutory and regulatory reporting requirements imposed upon school districts, with a view toward eliminating reporting requirements that are duplicative or unnecessary

and streamlining the reporting process." The committee reviewed the reporting data collected by DPI, identified report efficiencies and improved the shared knowledge of elements required by federal and state law. It was noted the state has approximately 100 Century Code and Administrative Code provisions relating to education reporting requirements.

Statewide Strategic Vision on K-12 Education

Greenway Strategy Group

The committee received information from a representative of Greenway Strategy Group, an organization hired to facilitate and develop, through a steering committee, a statewide strategic K-12 education vision. The need to develop a statewide vision was based on the recommendation of the 2016 business model review for DPI. The recommendation was to develop a 5-year strategic plan for DPI using an inclusive and collaborative process. The goal was to define measureable student outcomes to attain, identify critical areas for improvement, and develop high-priority strategic initiatives with action plans and budgets. Upon completion of those tasks, the goal was to align resources and staff within the department toward the initiatives. The initial goal of the Greenway Strategy Group project was to review the internal processes of DPI and identify opportunities for streamlining and creating efficiencies. According to the testimony, the project was intended to focus solely on DPI; however, as results were received from various stakeholders, the fragmentation of the education system was statewide. It was noted stakeholders indicated all organizations involved in education could be better aligned.

According to the testimony, the project consisted of three distinct phases. During Phase 1, which occurred between June and September 2017, an organizational assessment and environmental scan was conducted, which included leadership overviews, stakeholder input, trends and issues, and identify priorities. Phase 2, conducted between September and October 2017, consisted of strategy development and initiatives. Phase 3, conducted between November 2017 and June 2018, consisted of creating action plans and developing review processes.

The testimony noted the state's education stakeholders indicated areas of strength include public support for education; strong positive relationships between individuals working in education; and positive results regarding graduation rates, test scores, and college enrollments. The input from stakeholders indicated areas for improvement include a sense of complacency due to adequate student test results, a need for transparency of data, a need for a statewide education focus, a fragmentation of services among education entities, a lack of flexible scheduling preventing students from taking all desired courses, lagging academic performance in Native American populations, behavioral health issues, and a disconnect between high school curriculum and university expectations.

The strategic vision steering committee included representatives of the Governor's office, DPI, school district superintendents, executive directors of nongovernmental education provider entities, the University System, the Educational Technology Council, CTE, state legislators, ESPB, and REAs.

The steering committee developed a strategic vision that all students in the state will graduate choice ready with the knowledge, skills, and disposition to be successful. To achieve the vision, the steering committee determined long-term outcomes that need to be achieved include increasing the number of students entering kindergarten who are prepared to learn, demonstrating grade level reading proficiency by the third grade, meeting expected learning gains each year, engaging in learning, graduate choice ready, and reducing the disparity in achievement for students in poverty and native American students. To improve on the outcomes, the steering committee determined that increased efforts needed to be focused on expanded quality prekindergarten, career exploration, behavioral health, quality educators, and flexible instructional models.

North Dakota Council of Educational Leaders

The committee received information from a representative of the North Dakota Council of Educational Leaders regarding educational survey results and customer satisfaction. The purpose of the survey was to identify the services a school district uses outside of that school's district resources when administering K-12 education, and why those services were chosen. According to the testimony, 176 public and private school districts were asked to participate in the survey, and 131 responded. The committee discussed some of the unexpected results of the survey, such as the heavy usage and reliance on the REAs for outside services, the amount of online coursework being utilized, the need for expanded human resources services, and that DPI was not utilized as often as expected. The committee also noted the results indicated some duplication of services among entities in the state.

Educational Representatives from Maine

Several education representatives from Maine provided testimony to the committee regarding statewide education initiatives in Maine, the restructuring of Maine's education system, and roles overseeing and leading the restructuring process. It was noted Maine and North Dakota are similar in population and economy. According to the testimony, Maine struggled with transitioning to a technology-based economy and keeping the best and brightest young people in the state. To modernize its education system to meet some of the challenges, the state started by working on standards, assessments, and the longitudinal data system. The work was intended to shift Maine to a "competency based" education

model, and away from a "seat time" model. Maine issued a school district consolidation mandate to reduce the number of districts in the state and utilize resources more efficiently and effectively.

Maine changed graduation requirements based on competency of state standards, passed an innovative schools bill that allowed schools to receive a waiver from state requirements in certain situations, and developed a statewide strategic plan for education to streamline goals and initiatives.

Proponents of education restructuring in Maine argued the state's educational process for high schools, which was invented in 1892, must be re-evaluated to determine if it serves the best interests of education and the students learning in the system.

According to the testimony, the district consolidation in Maine saved the state millions of dollars. The money saved was used to reinvest in and improve the education system. Maine removed age-based groups from the education system, and the performance of students improved. The testimony noted grouping all students of the same age together in the same class does not work because not all students learn and mature at the same rate. The money saved through the restructuring also was used to purchase laptops for all students in grades 6 through 12, which allowed learning to be transparent and allowed students to learn continually at their own pace. According to the testimony, Maine's graduation rates have increased dramatically on a competency- and performance-based system. Waivers can be requested for a number of things ingrained in the culture of the Maine education system, such as for attendance requirements if a student was learning outside the classroom. It was noted sometimes the best "experts" for teaching students topics in certain fields may not be college-educated certified teachers. The innovative schools bill and waiver process allows students to receive credit for learning outside the classroom from individuals who are experts in a field, but who may not have the proper teaching credentials.

The committee noted North Dakota may not be ready to switch to a competency-based system, but understanding how other states went through the process is beneficial.

Governor's Office

The committee received information from a representative of the Governor's office regarding the innovative education task force and K-12 state agency efficiency work. The task force, which had more than 165 applicants, consists of legislators, teachers, superintendents, principals, school board members, business leaders, and parents from across the state. The ultimate goal of the task force is to determine what barriers are prohibiting school districts from defining and pursuing innovative education initiatives, and what can the state do to remove these barriers. The focus of the task force is on competency-based, personalized learning. Eventually the focus of the task force will be on assessments. It was noted the Governor hoped for at least 20 innovative education waiver applications as a result of Senate Bill No. 2186 (2017). The state has received $95,000 in grant money from the Bush Foundation to support the work of the task force.

Cybersecurity Briefing

The committee received information from a representative of ITD regarding education cybersecurity. The Information Technology Department has 11 full-time equivalent positions to defend against cybersecurity attacks. North Dakota, which is the second largest energy producer in the country, makes the state a large target for cybersecurity attacks. The Information Technology Department defends approximately 252,000 people on the STAGEnet network.

The Information Technology Department is developing a curriculum for cyber science and computer science teachers to help educate students and develop a cyber security workforce. It is necessary to have a standards-based curriculum to teach students which must be age-appropriate for students. According to the testimony, the goal is to train 700 teachers in the state with at least one teacher in each school comfortable being an advocate for computer science and cyber security. It was noted DPI is developing standards in computer science and cyber security.

BILL DRAFTS

Strategic Vision on K-12 Education

The committee considered a bill regarding the duties of the Superintendent of Public Instruction pertaining to a meeting of stakeholders regarding the statewide strategic vision on education. The bill requires the superintendent to hold an annual meeting of stakeholders to review and update the statewide K-12 strategic vision developed by the steering committee, and required the steering committee to prepare a collaborative report of the strategic plans aligned to the vision for the superintendent to report to the Legislative Management and standing committees. A representative of DPI indicated stakeholder meetings related to the statewide strategic vision would be held even without the statutory directive in the bill draft. It was noted the significance of the bill would be to require representatives of various entities to attend the meetings.

Committee members voiced concerns the bill did not address who would determine whether the strategic plans of an education entity are aligned to the statewide vision and what happens if the plans are not aligned.

The bill was supported by representatives of various education entities, including the Department of Career and Technical Education, the North Dakota School Boards Association, and the North Dakota Educational Technology Council.

The committee agreed having one collaborative report presented by the Superintendent of Public Instruction would be preferable to a report by each of the individual education entities that develops a plan aligned to the vision. Committee members also generally agreed, rather than requiring the superintendent to hold an annual meeting, the bill should be revised to require the superintendent to facilitate such a meeting.

Transferring Adult Education-Related Responsibilities to Job Service North Dakota

The committee considered a bill draft that would have transferred adult education-related responsibilities from DPI to Job Service North Dakota. Testimony from the representative of Job Service North Dakota indicated this is an area of duplication for which redundancies could be eliminated and services streamlined.

Some committee members expressed concerns that while having state agencies collaborate to administer programs may be a good idea, collaboration is necessary regardless of which agency has authority over a program. Concerns were expressed about transferring adult education from DPI to Job Service North Dakota. Committee members also noted trying to consolidate every budget with a workforce training aspect into one agency could be tenuous. Information received by the committee indicated 29 states operate adult education in agencies similar to DPI.

A representative of the Department of Human Services testified having employment resources in one location would be beneficial. The present system may require an individual to go to the Department of Human Services, DPI, or Job Service North Dakota, or all three, depending on the situation. According to the testimony, improvements could be made to ensure unemployed individuals are trained with the right skill sets to fill vacancies. It was noted between Department of Human Services' vocational rehabilitation and Job Service North Dakota, there are at least 17 workforce training sites in the state.

Technical Corrections Regarding the Every Student Succeeds Act

The committee considered a bill relating to technical corrections regarding the Every Student Succeeds Act. The bill draft changes several statutory references from the No Child Left Behind Act to the new Every Student Succeeds Act. The committee received no testimony in support of or opposition to the bill.

Recommendations and Conclusions

The committee recommends House Bill No. 1027 relating to technical corrections regarding the Every Student Succeeds Act.

The committee recommends Senate Bill No. 2025 to require the Superintendent of Public Instruction to facilitate a meeting of stakeholders regarding the statewide vision on education, and to require a collaborative report regarding the strategic vision.

REPORTS

The committee received a report from ESPB regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board.

The committee also received reporting from the Superintendent of Public Instruction regarding:

- Requests from a school or school district for a waiver of any rule governing the accreditation of schools.
- Waivers applications under NDCC Section 15.1-06-08.1.
- The innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules, and a review of evaluation date results.
- 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.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee was assigned the following responsibilities:

- Receive annual reports from the Board of Trustees of the Teachers' Fund for Retirement (TFFR) regarding the annual test of actuarial adequacy of the TFFR statutory contribution rates, pursuant to North Dakota Century Code Section 15-39.1-10.11.
- Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans, pursuant to Section 54-35-02.4.
- Receive periodic reports from the Office of Management and Budget (OMB) Human Resource Management Services Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions, pursuant to Section 54-06-31.
- Receive a biennial report from OMB summarizing reports of state agencies providing service awards to employees in the classified service, pursuant to Section 54-06-32.
- Receive a biennial report from OMB summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service, pursuant to Section 54-06-33.
- Receive a biennial report from OMB summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state, pursuant to Section 54-06-34.
- Receive notice from the Board of Trustees of the TFFR of any necessary or desirable changes in statutes relating to the TFFR, pursuant to Section 15-39.1-05.2.
- Approve terminology adopted by the Board of Trustees of the TFFR to comply with applicable federal statutes or rules, pursuant to Section 15-39.1-35.
- Approve terminology adopted by the Public Employees Retirement System (PERS) Board to comply with federal requirements, pursuant to Sections 39-03.1-29, 54-52-23, and 54-52.1-08.2.
- Receive notice from firefighters relief associations of the association's intent to provide a substitution monthly service pension, pursuant to Section 18-11-15.

Committee members were Representatives Mike Lefor (Chairman), Randy Boehning, Jason Dockter, Vernon Laning, Alisa Mitskog, Mark S. Owens, and Roscoe Streyle and Senators Brad Bekkedahl, Dick Dever, Karen K. Krebsbach, Oley Larsen, Gary A. Lee, and Carolyn C. Nelson.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

BACKGROUND

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 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 may 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.

Teachers' Fund for Retirement

Chapter 15-39, which was repealed in 1971, established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provided 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 TFFR 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.

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

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.

Before 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 nontaxable wages under a Section 125 plan, but excluding certain extraordinary compensation, such as fringe benefits or unused sick or vacation leave.

Members who joined TFFR by June 30, 2008, are Tier 1 members, while members who join after that date are Tier 2 members. 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 3 years of service, or if earlier, when the sum of the member's age and years of service is at least 85. Effective June 30, 2013, Tier 1 members who are at least age 55 and vested--3 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, may retire upon normal retirement on or after age 65 with credit for 3 years of service, or earlier, if 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 5 years of service, or earlier, if the sum of the member's age and years of service is at least 90. Effective July 1, 2013, Tier 2 members may retire upon normal retirement on or after age 65 with credit for 5 years of service, or earlier, if 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 monthly compensation times years of service. Benefits are paid as a monthly life annuity, with a guarantee 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.

To receive a death benefit, death must occur while being an active, inactive, or a 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.

A Tier 1 member leaving covered employment with less than 3 years of service and a Tier 2 member leaving covered employment with less than 5 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.

At times, the law relating to TFFR retirement benefits 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 is primarily governed by Chapter 54-52 and includes the combined PERS fund--PERS main system, the judges' retirement system, the public safety system with prior PERS main system service, and the public safety system without prior PERS main system service --Highway Patrolmen's retirement system, Job Service North Dakota retirement plan (Job Service), and retiree health insurance credit fund (RHIC). The plan is supervised by the PERS Board and covers most public employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1971, may 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 PERS Board. Political subdivision employees are not eligible to participate in the defined contribution retirement plan. The PERS Board also administers the uniform group insurance, life insurance, flexible benefits, and deferred compensation programs.

Members of the PERS main system and judges' retirement system enrolled before January 1, 2016, 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 PERS main system and judges' retirement system first enrolled after December 31, 2015, are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 90. Members of the public safety retirement system are eligible for a normal service retirement at age 55 and 3 eligible years of service or when age plus service is equal to at least 85.

The retirement benefit for a member of the PERS main and public safety systems 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 surviving spouse who is the sole refund beneficiary of a deceased member of the PERS main system or public safety system who had accumulated at least 3 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 only may 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 5 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 neither vested nor have a surviving spouse, the benefit is a lump sum payment of the member's accumulated contributions with interest.

The standard form of payment for members of the PERS main and public service 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. The final average salary is the average of the highest salary received by a member for any 36 months employed during the last 180 months of employment.

Retirement System Contributions

Except for the employer contribution rate for the public safety system plans, 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, 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 which is equal to or greater than 100 percent.

Retiree Health Insurance Credit Fund

The 1989 Legislative Assembly 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 by 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 2009 Legislative Assembly increased the employer contribution to 1.14 percent of the monthly salaries or wages of participating members. 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 actuarial valuation reports on TFFR dated July 1, 2017, and July 1, 2018. 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 the Governmental Accounting Standards Board (GASB) Statement No. 67 and 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.

Effective with the July 1, 2013, actuarial valuation, the TFFR Board of Trustees adopted an actuarial funding policy that provides direction on how to calculate an actuarially determined contribution. 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, 2018, the actuarially determined contribution is 12.94 percent, compared to 12.99 percent on July 1, 2017. Therefore, the statutory employer contribution rate of 12.75 percent resulted in a contribution deficiency of .19 percent of payroll as of July 1, 2018.

As of June 30, 2017, the actuarial value of assets was $2.526 billion, representing 99.8 percent of the market value of assets of $2.531 billion. This 99.8 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 asset values fall within a reasonable range around the corresponding market value. The actuarial asset method complies with these guidelines.

For the year ending June 30, 2018, the consulting actuary determined the asset return on a market value basis was 9.0 percent. After gradual recognition of investment gains and losses under the actuarial smoothing method, the actuarial rate of return was 7.9 percent, which represents an experience gain when compared to the assumed rate of 7.75 percent. Based on the actuarial value of assets, the funded ratio increased to 65.4 percent, compared to 63.7 percent as of July 1, 2017. The net pension liability decreased from $1,373,525,753 as of June 30, 2017, to $1,332,858,315 as of June 30, 2018.

The fund's cashflow (contributions minus benefit payments, refunds, and expenses) as a percentage of the market value of assets is a deficiency of 1.6 percent as of June 30, 2018, compared to a deficiency of 1.3 percent as of June 30, 2017. This decrease in net cashflow is primarily due to the growth of benefit payments and expenses. It is not unusual for a mature pension system to operate with minor negative cashflow as returns on investments generally exceed the net cash outflow and assets continue to rise; however, as the degree of negative cashflow increases, the plan's vulnerability to investment market volatility increases.

As of July 1, 2018, the fund had 10,881 active members, 1,623 inactive vested members, 971 inactive nonvested members, and 8,743 retirees and beneficiaries. Plan costs are affected by the age, years of service, and compensation of active members. The average age of active members was 41.9 years, and active members have 11.8 average years of service. Average compensation for active members was $60,055. As of July 1, 2018, 8,002 retirees and 741 beneficiaries were receiving total monthly benefits of $17,617,313, with the average monthly benefit amount for the retirees and beneficiaries being $2,015.

Public Employees Retirement System

The committee received annual actuarial valuation reports as of July 1, 2017, and of July 1, 2018, on the following PERS funds:

- Combined PERS fund:

  PERS main system;

  Judges' retirement fund;

  Public safety system with prior PERS main system service; and

  Public safety system without prior PERS main system service;

- Highway Patrolmen's retirement system;
- RHIC fund; and
- Retirement plan for employees of Job Service.

The actuarial valuations are 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 whether 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, 2018.

The actuarial valuations include consideration of covered member data, asset data, plan provisions, actuarial assumptions and methods, and funding policies. Actuarial assumptions should be reviewed at least every 3 to 5 years to ensure the assumptions continue to reasonably represent past and expected future experience. The most recent experience study covered the period July 1, 2009, through July 1, 2014, and the updated actuarial assumptions were adopted in the July 1, 2015, actuarial valuation.

A review of the economic assumptions was conducted in 2017 and updated economic assumptions were adopted, effective with the July 1, 2017, actuarial valuation. The following changes in actuarial assumptions were included in the 2017 actuarial valuation and affected all plans:

- Decrease in the investment return assumption from 8.00 to 7.75 percent for PERS and Highway Patrolmen's retirement funds, 8.00 to 7.50 percent for RHIC, and 7.00 to 5.70 percent for Job Service;
- Decrease in the payroll growth assumption from 4.50 to 3.75 percent for all funds except judges' retirement fund, which decreased from 4.00 to 3.25 percent;
- Decrease in the price inflation assumption from 3.50 to 2.50 percent; and
- Update to the asset smoothing method.

The following changes in actuarial assumptions were included in the July 1, 2017, actuarial valuation:

- Update in the actuarial cost method from projected unit credit to entry age normal cost for RHIC;
- Decrease in the benefit indexing assumption for inactive members in Highway Patrolmen's retirement fund from 4.00 to 3.00 percent; and
- Decrease in the assumed rate of increase in the Internal Revenue Code Section 415 benefit limit from 3.50 to 2.50 percent, which affects the Highway Patrolmen's retirement fund.

In addition, the PERS Board adopted updated actuarial equivalence factors first used effective October 1, 2018; adopted updated service purchase methodology that incorporates updated assumptions first used effective January 1, 2018; adopted return-to-work methodology; and adopted employer withdrawal liability methodology.

The valuation reports stated causes of unfunded liability include not contributing at least normal cost plus interest on a fund's unfunded liability; actual experience less favorable than assumed, such as lower rates of investment earnings, higher salary increases, earlier retirement dates, and lower rates of non-death terminations; and granting initial benefits or granting benefits increases for service already rendered.

Plan Funding

The statutory or approved employer and employee contribution rates for fiscal year 2019 are:

	Employee Rate	Employer Rate
PERS main system	7.00%	7.12%
Judges' retirement system	8.00%	17.52%
Public safety system with prior PERS main system service	5.50%[1]	9.81%
Public safety system without prior PERS main system service	5.50%	7.93%
Highway Patrolmen's retirement system	13.3%	19.70%
RHIC	0%	1.14%
Job Service	7.00%	0%

[1]Contribution rate for Bureau of Criminal Investigation is 6.00%.

The comparison of total - employer and employee - statutory or approved contribution rates and the total actuarial contribution rates for fiscal year 2019 are:

	Actuarial Contribution Rate	Statutory/Approved Contribution Rate	Statutory Rate Excess - Deficiency
PERS main system	18.25%	14.12%	(4.13%)
Judges' retirement system	10.03%	25.52%	15.49%
Public safety system with prior PERS main system service	13.19%	15.36%[1]	2.17%
Public safety system without prior PERS main system service	11.70%	13.43%	1.73%
Highway Patrolmen's retirement system	38.80%	33.00%	5.80%
RHIC	1.09%	1.14%	0.05%

[1]Contribution rate for Bureau of Criminal Investigation is 10.31%.

Due to the overfunded status of the Job Service fund, an employer contribution is not required

The following is a comparison of this year's total actuarial contribution rates to last year's rates:

	Fiscal Year 2018	Fiscal Year 2019
PERS main system	18.20%	18.25%
Judges' retirement system	12.81%	10.03%
Public safety system with prior PERS main system service	13.80%	13.19%
Public safety system without prior PERS main system service	12.27%	11.70%
Highway Patrolmen's retirement system	39.21%	33.80%

Demographics

The following demographic data was reported for active members as of July 1, 2018:

Category	Year Beginning July 1, 2018
PERS main system	
Number of active members	22,711
Average age	46.5
Average service credit	9.8
Total compensation	$1,027,317,202
Average compensation	$45,234
Judges' retirement system	
Number of active members	55
Average age	55.9
Average service credit	9.0
Total compensation	$8,008,841
Average compensation	$145,615
Public safety system with prior PERS main system service	
Number of active members	598
Average age	36.6
Average service credit	6.1
Total compensation	$34,521,069
Average compensation	$57,728
Public safety system without prior PERS main system service	
Number of active members	119
Average age	38.7
Average service credit	3.7
Total compensation	$6,110,843
Average compensation	$51,352
Combined PERS fund	
Number of active members	23,483
Average age	46.3
Average service credit	9.7
Total compensation	$1,075,957,954
Average compensation	$45,819
Highway Patrolmen's retirement system	
Number of active members	154
Average age	37.4
Average service credit	10.6
Total compensation	$10,737,297
Average compensation	$69,723
Job Service	
Number of active members	7
Average age	63.1
Average service credit	42.0
Total compensation	$416,652
Average compensation	$59,522

Category	Year Beginning July 1, 2018
RHIC	
Number of active members	23,747
Average age	46.2
Average service credit	9.7
Total compensation	$1,094,216,774
Average compensation	$46,078

Funded Ratio

The following is a comparison of this year's actuarial funded ratio to last year's ratio:

	July 1, 2017		July 1, 2018	
	Unfunded Actuarial Liability	Funded Ratio	Unfunded Actuarial Liability	Funded Ratio
PERS main system	$1,088,452,965	69.9%	$1,089,647,874	71.6%
Judges' retirement system	($7,092,753)	117.4%	($10,128,128)	124.4%
Public safety system with prior PERS main system service	$12,289,006	80.0%	$11,199,434	83.5%
Public safety system without prior PERS main system service	($32,763)	100.5%	($412,933)	105.3%
Highway Patrolmen's retirement system	$23,324,776	75.2%	$22,278,028	77.4%
RHIC	$82,091,843	58.3%	$80,451,080	61.1%
Job Service	($34,533,415)	154.1%	($30,119,796)	144.1%

Combined Public Employees Retirement System Fund

The combined PERS fund is made up of the PERS main system, judges' retirement fund, public safety system with prior PERS main system service, and public safety system without prior PERS main system service. For the combined PERS fund, the present contribution rates are not sufficient to improve the funded ratio.

As a result of this funding ratio, there are GASB implications that affect the PERS main, judges' retirement, and public safety systems, including a discount rate of between 6.30 and 6.50 percent needs to be used to calculate the total pension liability and is expected to increase the net pension liability compared to the unfunded actuarial accrued liability from the funding actuarial valuation by an additional $600 million to $650 million. These GASB implications began affecting employers as early as fiscal year 2018.

Because the statutory employer contribution rates are lower than the actuarial employer contribution rates for the PERS main system, the PERS actuary consultant recommended the statutory contribution rates be increased so the unfunded liability is amortized over a period of no longer than a closed 30-year period, to reach 100 percent funded within 30 years. This contribution increase can be accomplished by increasing the employer rates, the employee rates, or both. The total actuarial contribution rate, based on 30-year amortization of the unfunded liability, is 16.69 percent for the PERS main system.

Because the statutory employer contribution rate is significantly higher than the actuarial employer contribution rate for the judges' retirement system and the funded ratio is currently over 120 percent, the PERS actuary consultant recommended the contribution rates for the employer or the employee be decreased. An option to decrease the contribution includes setting a total contribution rate at a certain percentage of the total normal cost rate. The percentage of the total normal cost rate could decrease as higher funded ratios are attained, and if all assumptions are realized and the funded ratio is over 100 percent, a contribution higher than the normal cost rate would result in increasing the funded ratio. In addition, the consultant recommended consideration of whether an additional decrease in the investment return assumption is appropriate, while maintaining a funded ratio above 100 percent.

Highway Patrolmen's Retirement System

The Highway Patrolmen's retirement system experienced an actuarial employer contribution rate decrease for fiscal year 2019 compared to fiscal year 2018. The actual plan experience contributed to a net decrease in the actuarial contribution rate compared to fiscal year 2018, with the investment rate of return approximately 9.1 percent on a market value of assets basis and 9.2 percent on an actuarial value of assets basis and salary increases lower than assumed.

Because the statutory employer contribution rates are lower than the actuarial employer contribution rates for the Highway Patrolmen's retirement system, the PERS actuary consultant recommended the statutory contribution rates be increased so the unfunded liability is amortized over a period of no longer than a closed 30-year period, to reach 100 percent funded within 30 years. This contribution increase can be accomplished by increasing the employer rates, the employee rates, or both. The total actuarial contribution rate, based on 30-year amortization of the unfunded liability, is 35.74 percent for the Highway Patrolmen's retirement system.

Retiree Health Insurance Credit Fund

The PERS actuary consultant identified several highlights in the valuation year. Although the fund had unfavorable demographic experience, the funded ratio increased by about 2 percent and the statutory contribution rate of 1.14 percent is higher than the actuarial contribution rate based on a 12-year amortization period.

The PERS actuary consultant recommended the PERS Board adopt RHIC participation assumptions and a lower investment return assumption. Additionally, the consultant recommended the PERS Board consider a 20-year amortization period for the RHIC in calculating the actuarial contribution rate as is done with the other PERS plans.

Retirement Plan for Employees of Job Service North Dakota

The Public Employees Retirement System Board assumed administration of the retirement plan for employees of Job Service pursuant to legislation enacted in 2003. This is a closed retirement plan for employees of Job Service.

The July 1, 2018, actuarial valuation reported the plan surplus decreased by about $4.4 million from July 1, 2017, to July 1, 2018, due to the decrease in the investment return assumption from 5.70 to 4.75 percent. The investment rate of return was approximately 4.8 percent on an actuarial value of assets. In addition, there was a cost of living adjustment gain due to cost of living adjustment increases effective December 1, 2017, granted on retiree benefits of 2 percent compared to the fiscal year 2018 actuarial assumption of 2.5 percent.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN LEGISLATIVE PROPOSALS

The committee established April 2, 2018, 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 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 submitted legislative proposals to the affected retirement or insurance program and requested the program authorize the preparation of actuarial reports. For technical comments, PERS used the actuarial services of Gabriel, Roeder, Smith, and Company Holdings, Inc., to evaluate proposals that affected retirement programs, and the services of Deloitte LLP to evaluate proposals that affected the public employees health insurance program. For technical comments, TFFR used the actuarial services of The Segal Group Inc., in evaluating proposals that affect TFFR.

The committee obtained written actuarial information on each proposal over which the committee took jurisdiction. 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 the 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 committee makes a favorable recommendation, unfavorable recommendation, or no recommendation on each proposal.

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 66th Legislative Assembly.

Teachers' Fund for Retirement

The following is a summary of the proposal affecting TFFR over which the committee took jurisdiction, a summary of the actuarial analysis, and the committee's action on the proposal:

Bill No. 126

Sponsor: TFFR

Proposal: Updates statutes relating to the TFFR to remain in compliance with the federal Internal Revenue Code provisions regarding direct rollovers.

Actuarial analysis: The TFFR consulting actuary reported the bill does not have an actuarial cost impact on TFFR. The bill clarifies existing statutory provisions to more accurately reflect actual operations of the TFFR.

Committee report: Favorable recommendation.

Public Employees Retirement System

The following is a summary of the proposals primarily affecting PERS over which the committee took jurisdiction, a summary of the actuarial analysis, and the committee's action on each proposal:

Bill No. 19

Sponsor: Senator O. Larsen

Proposal: If a state employee elects family health benefits coverage, the employee pays the difference between the cost of the individual coverage and the family coverage.

Actuarial analysis: The PERS consulting actuary reported the bill would:

- Eliminate the composite rate used for individual and family plans and replace the rate with single and family plan rates.
- Shift significantly premium dollars from the state to employees.
- Have an unknown financial impact because it is not possible to estimate how many family contracts may opt for single coverage.
- Result in some adverse risk selection due to the mix of employees who would elect single versus family coverage.
- Result in the loss of federal Affordable Care Act grandfathered status, which will increase premiums approximately 3 percent.
- Beginning with the July 1, 2019, benefit plan, result in little time to adjust benefit plans and would not coincide with open enrollment.

Committee report: Unfavorable recommendation.

Bill No. 20

Sponsor: Representative Streyle

Proposal: Limits the authority of the Employee Benefits Programs Committee by removing the requirement legislators or the Legislative Management submit proposed legislative measures to the committee for review, but continue the requirement executive and judicial branches submit legislative measures affecting the retirement, health and retiree health plans to the committee for review.

Actuarial analysis: Both PERS and TFFR submitted analyses on this measure. The PERS consulting actuary reported risks associated with not performing an actuarial analysis of a bill before the bill is passed. There also may be tax qualification issues if legislative changes are made without the proper review or analysis.

The Teachers' Fund for Retirement consulting actuary reported although the bill does not have an actual cost impact, the bill could lead to a scenario that has a significant impact on the financial health of the TFFR and other retirement systems.

Committee report: Unfavorable recommendation.

Bill No. 117

Sponsor: Representative Kasper

Proposal: Provides contracts for the provision of PERS health benefits coverage may not exceed 2 years and may not be renewed, and revises the law relating to the PERS self-insurance health plans.

Actuarial analysis: The PERS consulting actuary reported the bill:

- Would not have a material actuarial impact on the health plan.
- Could affect the willingness of new carriers to bid on the plan and could have the unintentional effect of reducing future competition for the PERS health benefit plan.
- Could result in carriers being less aggressive in the bids knowing the carrier would face another bid in 2 years. A 6-year process may encourage carriers to invest in the relationship by being more aggressive in pricing and other guarantees.
- May be subject to constitutional challenge based on Section 18 of Article I of the Constitution of North Dakota, as it relates to possible impairment of contract.
- Does not clearly favor one health benefit model over another. The history of the health insurance bid process indicates full bids, partial bids, and renewals have been used during past bienniums, plan design has changed,

and PERS reserves have been used to mitigate premium increases. As a result, the history does not indicate if any method is more effective than the others in achieving lower premiums.

- Would have minimal effect on membership as a result of bidding the plan more often. However, if the result is changes in the carrier every 2 years, this proposal could have an effect on members since networks, formularies, and other items may change even though there may not be any changes in the plan design.

Committee report: Unfavorable recommendation.

Bill No. 128

Sponsor: PERS

Proposal: This technical corrections bill provides if health benefits are provided through a self-insurance health plan, PERS is not required to provide prescription drug coverage through a third-party administrator and is not required to provide stop-loss coverage for prescription drug coverage. The bill draft also clarifies only vested members of the Highway Patrolmen's retirement system are qualified to purchase service credit and retiree health benefits may be used for any dental, vision, and long-term care benefits.

Actuarial analysis: The PERS consulting actuary addressing health benefits reports the proposed amendments remove outdated language and clarify administrative aspects of the program, with no anticipated material actuarial impact due to these amendments. The Public Employees Retirement System consulting actuary addressing the retirement programs reports there is no actuarial impact expected to RHIC and the changes are designed to provide more parity with the other PERS retirement systems.

Committee report: Favorable recommendation.

Bill No. 129

The committee took jurisdiction over two versions of this bill draft. Both versions of Bill No. 129 are substantively the same, except for the effective dates of the revisions. The Public Employees Retirement System reported if it introduces this as part of its legislative package, PERS will pursue the second version and not the first version.

Sponsor: PERS

Proposal: The second version of this bill draft maintains RHIC benefits for employees hired before January 1, 2020; provides employees hired after December 31, 2019, do not receive RHIC benefits; and provides the 1.14 percent employer RHIC contributions for employees hired after December 31, 2019, are re-directed to the PERS retirement plan.

Actuarial analysis: The PERS consulting actuary reports:

- The RHIC fund remains solvent under current actuarial assumptions.
- The PERS main plan moves from becoming insolvent in 2106 to being fully funded in 2101.
- The bill draft lowers the PERS main plan's unfunded liability for GASB reporting.
- The bill draft increases benefits for defined contribution plan members.
- The bill draft creates benefit inequity between current and new employees.
- Future changes to actuarial assumptions, especially assumed rate of return, may create an unfunded liability.

Committee report: Unfavorable recommendation for the first version; favorable recommendation for the second version.

Bill No. 130

The committee took jurisdiction over two versions of this bill draft. Both versions of Bill No. 129 are substantively the same, except the first version has a trigger provision. The Public Employees Retirement System reported if PERS introduces this bill draft as part of its legislative package, it will pursue the second version and not the first version.

Sponsor: PERS

Proposal: For new hires, decrease the retirement multiplier from 2.0 to 1.75 percent. The first version of this bill draft provides for a trigger to return to a 2.0 multiplier if the PERS main plan reaches 100 percent funding. The second version of this bill draft does not contain this trigger.

Actuarial analysis: The PERS consulting actuary reports without any change, the PERS main plan will be insolvent in 2106; however, with this change, under current actuarial assumptions, the PERS main plan is projected to reach 100 percent funding in 2087.

Committee report: Unfavorable recommendation for the first version; favorable recommendation for the second version.

Bill No. 131

Sponsor: PERS

Proposal: Provides for a 1 percent increase in employee and a 1 percent increase in employer contribution for the PERS main plan and the defined contribution plan.

Actuarial analysis: The PERS consulting actuary reports:

- The current PERS main plan contribution rate is insufficient to pay off the $1.1 billion unfunded actuarial accrued liability.
- Under the current actuarial assumptions, the PERS main plan will be insolvent in 2106.
- With the contribution increase provided in this bill draft, under the current actuarial assumptions, the PERS main plan will be 100 percent funded in 2087.
- The bill provides for an increase of benefits for defined contribution plan members.

Committee report: Favorable recommendation.

Bill No. 135

Sponsor: PERS

Proposal: For purposes of PERS retirement benefits, prospectively changes the definition of "final average salary" to level salary fluctuations resulting from different pay schedules.

Actuarial analysis: The PERS consulting actuary reports no actuarial effect because the actuary determines liabilities using an annual salary. The proposed change is expected to treat members similarly regardless of pay schedule.

Committee report: Favorable recommendation.

Bill No. 146

Sponsor: Representative Boehning

Proposal: Requires PERS to develop a health savings account option for an employee to elect in lieu of taking health insurance and directs PERS to conduct a health benefits coverage study.

Actuarial analysis: The PERS consulting actuary reports because federal law provides for an employer to contribute funds to a health savings account, the employee must be enrolled in a high deductible health plan, as drafted, this option is not allowed under federal law.

Committee report: Unfavorable recommendation.

Bill No. 289

Sponsor: Legislative Management - Health Care Reform Review Committee

Proposal: Imposes new regulatory and statutory requirements regarding any self-insurance health plan administered by PERS; places the Insurance Department in a regulatory role over a self-insurance health plan; makes the purchase of stop-loss insurance as part of a self-insurance health plan optional; modifies the contingency reserve funds requirements for self-insurance health plans; changes guidelines for accepting a self-insurance bid; allows for a Bank of North Dakota line of credit if PERS implements a self-insurance health plan; and revises the PERS health benefit contract renewal considerations.

Actuarial analysis: The PERS consulting actuary reports removing the stop-loss requirement for self-insurance health plans is acceptable and could result in administrative savings; the self-insurance health plan reserve requirements are appropriate; and since the current PERS health benefits cover the health benefits that would be mandated coverage under a self-insurance health plan, there is no actuarial impact if PERS moves to a self-insurance health plan with these benefits.

Committee report: Favorable recommendation.

Bill Nos. 382, 383, and 388

The committee took jurisdiction over these three proposals during the interim; however, the committee did not receive an actuarial analysis or take committee action during the interim. The committee plans to schedule a meeting before the 2019 legislative session to receive the actuarial analysis and take committee action over these three proposals.

Bill Nos. 382 and 383 would provide for closure of the PERS main plan for new hires and provide for the use of legacy fund principal to pay the unfunded liability of the plan. The difference between the bill drafts is how each addresses the PERS main plan participation by political subdivisions.

Bill No. 388 would provide state employees who opt for family health insurance coverage would be responsible to pay 15 percent of the difference between the cost of an individual plan and a family plan.

ADDITIONAL COMMITTEE RESPONSIBILITIES

Recruitment and Retention Bonuses

Pursuant to Section 54-06-31, the committee received annual reports from the Human Resource Management Services Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. During the period July 1, 2017, to June 30, 2018:

- The Department of Corrections and Rehabilitation made six referral bonus payments to its employees totaling $1,200, averaging $200 per payout.
- The following five agencies made recruitment bonus payments, totaling $269,061, and were reimbursed $18,157 from employees who did not fulfill the bonus agreement, for a net amount of $250,904:

  The Department of Human Services made 135 payments for a total of $248,952, an average of $1,403 per payment, and was reimbursed $14,604.

  The State Department of Health made one payment for $4,109 and was reimbursed $2,857.

  The Information Technology Department made seven payments totaling $14,000 to four new hires.

  The Department of Public Instruction made one payment of $2,000.

  The Department of Transportation received a reimbursement of $695.
- The following six agencies made retention bonus payments totaling $430,741:

  The Bank of North Dakota made one payment for $10,401.

  The Department of Agriculture made two payments for a total of $11,190, an average of $5,595 per payment.

  The State Department of Health made three payments for a total of $13,358, an average of $4,453 per payment.

  The Department of Human Services made 16 payments for a total of $150,011, an average of $9,376 per payment.

  The Department of Mineral Resources made 124 payments for a total of $233,781, an average of $1,885 per payment.

  The State Auditor's office made four payments for a total of $12,000, an average of $3,000 per payment.

Service Awards, Tuition, and Professional Organizations

In accordance with Sections 54-06-32, 54-06-33, and 54-06-34, the Human Resource Management Services Division reported for the 2015-17 biennium, state employee service awards totaled $524,760.32; employer-paid costs of training or educational courses, including tuition and fees, totaled $6,343,598.37; and employer-paid professional organization membership and service club dues for individuals totaled $1,246,470.91. The following schedule is a summary of the information presented for the 2015-17 biennium:

Report on State Employee Service Awards, Employer-Paid Tuition, and Employer-Paid Professional Organization Membership and Service Club Dues July 1, 2015 - June 30, 2017 (Sections 54-06-32 to 54-06-34)				
Agency	**2015-17 Authorized Full-Time Equivalent Positions**	**State Employee Service Awards**	**Employer-Paid Costs of Training or Educational Courses, Including Tuition and Fees**	**Employer-Paid Professional Organizational Membership Service Club Dues for Individuals**
10100 Governor's office	18.00			$415.00
10800 Secretary of State	34.00	$2,047.45	$775.00	12,606.00
11000 Office of Management and Budget	122.50	2623.00	11,752.46	5,973.66
11200 Information Technology Department	350.30	27,743.00	465,989.52	66,990.42
11700 State Auditor's office	59.80	2,745.95	53,044.74	3,895.00
12000 State Treasurer	8.00		970.85	5,495.00
12500 Attorney General	250.00	3,950.00	7,477.75	30,771.00
12700 Tax Commissioner	136.00	12,486.50	33,079.72	4,625.00
14000 Office of Administrative Hearings	5.00	405.88		
18000 Judicial branch	391.00	19,125.85	155,113.28	333,854.97
18800 Commission on Legal Counsel for Indigents	40.00		3,362.95	24,902.55
19000 Retirement and Investment Office	19.00	1,670.93	27,651.00	13,630.00
19200 Public Employees Retirement System	34.50	2,959.00	20,205.75	22,253.00
20100 Department of Public Instruction	99.75	10,256.91	30,475.42	16,838.26
22600 Department of Trust Lands	33.00	2,445.69	54,131.58	13,960.00
24400 Forest Service	28.96			21,259.00
25000 State Library	29.75	1,301.60		18,319.00
25200 School for the Deaf	45.61		2,007.00	
25300 North Dakota Vision Services - School for the Blind	30.00	4,039.79	10,557.49	3,389.00
27000 Department of Career and Technical Education	26.50	1,249.95		6,605.00
30100 State Department of Health	365.00	29,700.50	143,402.42	44,923.50
30500 Tobacco Prevention and Control Committee	8.00	200.00	8,169.00	2,775.00
31300 Veterans' Home	120.72	4,100.00	17,808.38	965.00
32100 Department of Veterans' Affairs	9.00		1,070.00	3,715.00
32500 Department of Human Services	2211.08	141,783.60	424,789.24	81,574.49
36000 Protection and Advocacy Project	27.50	2,508.88		
38000 Job Service North Dakota	237.76	12,783.00	81,532.69	945.00
40100 Insurance Commissioner	49.50	1,733.70	17,291.20	8,511.00
40500 Industrial Commission	121.75	5,558.50	14,758.47	389.00
40600 Department of Labor and Human Rights	15.00	383.45	7,510.00	997.93
40800 Public Service Commission	46.00	3,799.50	11,700.67	2,905.00
41200 Aeronautics Commission	7.00	334.90	99.00	
41300 Department of Financial Institutions	30.00		24,060.00	
41400 Securities Department	9.00	686.00	3,945.00	4,380.00
48500 Workforce Safety and Insurance	260.14	23,090.66	394,990.55	63,851.39
50400 Highway Patrol	215.00		227,372.36	28,787.20
53000 Department of Corrections and Rehabilitation	836.29	61,177.24	192,318.22	114,627.10
54000 Adjutant General	234.00	14,293.65	3,070,264.97	22,759.00
60100 Department of Commerce	69.40	3,305.55	11,995.33	2,356.00
60200 Agriculture Commissioner	77.00	3,923.00	26,313.45	49,347.53
60700 Milk Marketing Board		450.00		
61600 State Seed Department		750.00	1,449.06	2,550.00
67000 Racing Commission	2.00	13.25		
70100 State Historical Society	78.00	6,688.00	35,150.61	156.28
72000 Game and Fish Department	163.00	17,867.56	12,604.98	95,542.66
75000 Parks and Recreation Department	66.00	9,327.88	19,209.68	46,574.95
77000 State Water Commission	97.00	8,375.00	17,206.77	35,833.02
80100 Department of Transportation	1080.50	76,875.00	701,991.81	47,482.00
Total	1486.50	$524,760.32	$6,343,598.37	$1,267,729.91

Compliance with Federal Law

Pursuant to Sections 15-39.1-05.2 and 15-39.1-35, the Board of Trustees of the TFFR reported no action by the committee was required regarding any necessary or desirable changes in statutes relating to the TFFR fund and there was no terminology adopted by the Board of Trustees to approve to comply with applicable federal statutes or rules. The Public Employees Retirement System Board reported no action by the committee was required under Section 39-03.1-29, 54-52-23, or 54-52.1-08.2 to approve terminology adopted by the PERS Board to comply with applicable

federal requirements. However, the committee received regular status reports from TFFR and PERS regarding TFFR and PERS activities.

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.

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

The Energy Development and Transmission Committee was created in 2007 and 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. The study may include reviewing and recommending policies related to extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy.

In addition to its statutory study responsibilities, the committee was assigned the following three studies for the 2017-18 interim:

- Section 22 of Senate Bill No. 2013 (2017) provided for a study of the oil and gas tax revenue allocations to hub cities and hub city school districts. The study must include consideration of current and historical oil and gas tax revenue allocations and the appropriate level of oil and gas tax allocations.
- Section 34 of House Bill No. 1015 (2017) provided for a study of the taxation of wind energy and the distribution of tax collections related to wind energy. The study must include consideration of the various methods of taxing wind energy and the appropriate level of distributions to the taxing districts and the state.
- House Concurrent Resolution No. 3027 (2017) provided for a study of the estimated fiscal impact of refracturing existing oil wells, including the estimated costs and benefits related to tax collections and any potential tax incentives for refracturing existing oil wells.

The committee is responsible for receiving various reports, as assigned by the Legislative Management, including:

- A biennial report from the Energy Policy Commission regarding recommendations for a comprehensive energy policy pursuant to Section 17-07-01.
- A biennial report from the North Dakota Transmission Authority regarding its activities pursuant to Section 17-05-13.
- A biennial report from the North Dakota Pipeline Authority regarding its activities pursuant to Section 54-17.7-13.
- A report, beginning December 2014 and every 4 consecutive years thereafter, on the amount of money in the carbon dioxide storage facility trust fund and on the amount of fees needed to satisfy the fund's objectives pursuant to Section 38-22-15.
- A report from a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions and receives a tax credit pursuant to Section 57-60-02.1.
- A report, by September 30, 2018, from the Industrial Commission regarding brine pond and soil remediation studies conducted under Section 2 of House Bill No. 1347 (2017).
- A report, by September 30, 2018, from the Tax Department regarding its study of the valuation of oil and gas as used to determine mineral royalty payments and tax liability pursuant to Senate Bill No. 2013 (2017) and House Bill No. 1015 (2017).

Committee members were Senators Rich Wardner (Chairman), Brad Bekkedahl, Jim Dotzenrod, Merrill Piepkorn, David S. Rust, and Jessica Unruh and Representatives Tracy Boe, Mike Brandenburg, Ben Koppelman, Corey Mock, Todd Porter, and Gary R. Sukut.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

HUB CITY OIL AND GAS TAX ALLOCATIONS STUDY

The Legislative Management assigned the committee the responsibility to study the oil and gas tax revenue allocations to hub cities and hub city school districts. The committee received information from the hub cities and hub city school districts regarding the use of oil and gas tax allocation funding, infrastructure projects, and challenges in operations. As a part of the study, the committee met in each of the hub cities--Dickinson, Minot, and Williston--and conducted tours of the cities to observe the impacts of oil and gas development.

City of Dickinson

The committee received information regarding Dickinson's debt levels, which increased from $6 million in 2008 to $92 million in 2018. The population is projected to grow by 3.5 percent per year through 2023. Dickinson's cumulative budgetary shortfall for 2018 through 2023 is estimated to be $128.8 million. Approximately 30 percent of Dickinson's revenue is from oil and gas gross production tax allocations while 9 percent is from property tax revenues. The Dickinson Public School District expanded three elementary schools, built a new elementary school, and built a new middle school because of increasing student enrollments. A new elementary school and a new high school will be needed within a few years based on the current increases in enrollment. The Theodore Roosevelt Airport is completing a $62 million project to reconstruct the main runway. The fire department's responses to incidents doubled from 2008 to 2017, and the full-time staff for the fire department quadrupled during the same period. Approximately $395 million of infrastructure was constructed between 2008 and 2017, including roads, water and sewer systems, and public buildings.

City of Minot

Based on information provided by the City of Minot, debt levels increased from $63 million in 2008 to $104 million in 2018. Minot's population is anticipated to grow by 2 percent per year through 2023. The cumulative budgetary shortfall for 2018 through 2023 totals $112.4 million. Approximately 5 percent of Minot's revenue is from oil and gas gross production tax allocations while 32 percent is from property tax revenues. The city's population increased by 35 percent from 2007 to 2016, and the land area of the city increased by 85 percent during the same period. Calls for police services increased by approximately 38 percent from 2007 to 2016. The police department increased the number of sworn officers by 25 percent to address the increased demand for services, but the department has had challenges filling the positions with turnover rates averaging 14 percent. The city invested approximately $250 million in capital asset improvements from 2007 to 2016 due to the growth of the city.

City of Williston

The City of Williston provided information regarding the city's debt levels, which increased from $39 million in 2008 to $340 million in 2018. The annual population growth rate through 2023 is projected to be 2.8 percent. Williston's cumulative budgetary shortfall for 2018 through 2023 is estimated to be $181.3 million. Approximately 40 percent of Williston's revenue is from oil and gas gross production tax allocations while 8 percent is from property tax revenues. Student enrollments in the Williston Public School District increased by 83 percent from 2010 to 2017. City staff increased by 170 percent, from 120 employees in 2006 to 323 employees in 2017. Williston invested $283 million in infrastructure improvements related to sewer and water projects, a new law enforcement center, and two new fire stations. The city relies on local sales tax revenue for infrastructure and public safety expenses, but sales tax collections are a volatile revenue source for the city. Williston identified future infrastructure needs of $169 million, including $83 million for road projects, $60 million of local financing for the new airport, $25 million for a new public works building, and $1 million for city hall renovations.

Four County Study Report

As a part of the study, the committee received a report from Advanced Engineering and Environmental Services, Inc., regarding the operational and financial needs of Dunn, Mountrail, McKenzie, and Williams Counties. Staffing levels increased by 31 percent in Dunn County, 225 percent in McKenzie County, 46 percent in Mountrail County, and 84 percent in Williams County from 2010 to 2017. The total property taxes levied from 2010 to 2017 increased by 107 percent in Dunn County, 424 percent in McKenzie County, 107 percent in Mountrail County, and 121 percent in Williams County. According to information from the Upper Great Plains Transportation Institute, $987 million was invested in road projects in the four counties between 2010 and 2017 with an estimated $1,576 million of additional funding needed by 2036. The cumulative budgetary gap for road project funding needs between 2018 and 2022 totals $67 million for Dunn County, $143 million for McKenzie County, $34 million for Mountrail County, and $115 million for Williams County.

Committee Consideration

The committee discussed the oil and gas tax allocation formulas as well as possible changes to the formulas. The discussion indicated the hub cities receive a separate set of oil and gas tax revenue allocations and are excluded from the regular allocations to cities under the oil and gas tax revenue allocation formulas, which benefits the other cities in the oil-producing counties. The discussion also indicated the oil and gas tax revenues provide a benefit to the state and other political subdivisions in non-oil-producing counties.

The committee received information regarding proposed changes to the formulas primarily relating to the hub cities' and the state's share. The allocations to hub cities are based on mining employment, but the proposed changes would base the allocations on multiple factors, including population, mining establishments, and mining employment. The proposed changes to the state's share of oil and gas tax allocations include allocations to two new state funds designated for infrastructure projects in non-oil-producing counties.

Recommendation

The committee recommends continuing the concept of hub cities in the oil and gas tax allocation formulas.

WIND ENERGY TAXATION STUDY

The Legislative Management assigned the committee the responsibility to study the taxation of wind energy and the distribution of tax collections related to wind energy. The committee received information regarding electricity markets and electrical generation taxation.

Electricity Markets

Utility companies provided an overview of electricity distribution and pricing. Electricity is generated and distributed within power pools, which are interconnected markets operated by regional transmission organizations. Power pools balance power supplies, provide reliability, and create operating efficiencies. The two regional transmission organizations operating in North Dakota are Midcontinent Independent System Operator and Southwest Power Pool. A utility submits an offer price for each generation unit to sell power into the power pool as a part of the wholesale electrical market. The regional transmission organization dispatches electricity throughout the power pool starting with the units that have the lowest offering prices and continues to dispatch power from successively more expensive units until enough electricity is supplied to the power pool. The offer price for each unit is based on the variable cost to operate the unit, which is primarily the cost of fuel. Wind-powered generation units usually are offered at $0 because the fuel (wind) has no cost. After selling power into the power pool, a utility purchases power from the pool to provide electricity to its service area. A utility then sells power to end users at retail prices, which are higher than wholesale prices, allowing the utility to recover fixed and administrative costs. Challenges in the electricity markets include environmental regulations, tax policies, and supply fluctuations that affect baseload operations.

The committee received information regarding a study by the United States Department of Energy, which highlighted key issues regarding electrical grid reliability. The increase in electricity production from natural gas is the primary factor in the displacement of baseload production from coal and nuclear sources, according to the study. Market pricing challenges may exist for electricity production from certain energy sources because the pricing may not provide compensation for reliability.

As a part of the study, utility companies provided information to the committee regarding an example of energy supply challenges and price variations during a cold weather event in December 2017. Some companies relied on market purchases to meet customer demand during the cold weather event because wind turbines and other generation units were unable to operate in the cold weather. The cold weather caused natural gas pipelines to freeze resulting in natural gas supply issues, which triggered a rapid increase in natural gas prices. One utility company observed prices increasing from $12 per megawatt-hour to $93 per megawatt-hour.

The committee received information from state agencies regarding mitigation payments, which may impact the future development of energy projects such as wind turbines. State law requires the Public Service Commission to evaluate and consider the direct and indirect environmental impacts when siting energy development projects. The Game and Fish Department developed a state wildlife action plan to identify potential environmental impacts related to energy development projects and coordinates with the Public Service Commission during the siting process to ensure projects minimize the impact on wildlife and native habitats. According to information from the Agriculture Commissioner, farmers are concerned about how mitigation payments are valued and how the payments are used, which may have negative effects on the agriculture industry.

Electrical Generation Taxation

The committee received information regarding energy-related taxes and tax exemptions. The state imposes a coal severance tax and a coal conversion tax and provides exemptions under certain conditions for these two taxes. Natural gas is subject to the oil and gas gross production tax as well as a generation tax if the natural gas is used to produce 100 kilowatts or more of electricity. Wind power is subject to property tax or payments in lieu of property tax, both of which are distributed only to local political subdivisions. The state provided a sales tax exemption for materials used to construct wind turbines and an income tax credit based on the cost of installing wind turbines, but these tax incentives expired on December 31, 2016.

The committee received information regarding federal tax incentives for coal, oil and gas, and wind. The primary federal tax incentives related to coal include income tax deductions for the depletion of minerals and for mining exploration costs. The primary federal tax incentives related to oil and natural gas include income tax deductions for intangible drilling costs and for the depletion of oil and natural gas wells. The federal government provides a production tax credit for wind energy, but the credits are being phased out.

The Tax Department provided information regarding electrical generation tax collections. The state collected approximately $52.6 million of coal conversion tax revenues and $22 million of coal severance tax revenues during the 2015-17 biennium. Natural gas electrical generation units generally are used to provide power only during periods of peak demand resulting in tax collections of approximately $2 million during the 2015-17 biennium. Property taxes on wind turbines provided approximately $7.9 million to local taxing districts while the payments in lieu of property taxes associated with wind turbines provided approximately $4.4 million to local taxing districts during the 2015-17 biennium. Subsequent to the expiration of the sales tax exemption for wind turbine materials in December 2016, the state has not reported any sales tax collections related to wind turbine projects based on publicly available data for permitted projects. However, approximately $7 million of sales taxes would be collected if a 150 megawatt project is completed.

According to information provided by representatives of the utility industry, North Dakota's electrical generation tax is competitive with the wind energy taxes in South Dakota and Minnesota and is approximately three times lower than the tax in Montana. Based on sample data from facilities in North Dakota, a wind turbine operating at 40 percent capacity pays approximately $1.21 of tax per megawatt of electricity produced, the same as a coal power plant operating at 70 percent capacity. Wind turbine developers sell power to utilities based on power purchase agreements, which determine the price of electricity and the schedule for delivering electricity. The benefits from federal production tax credits and other tax incentives are passed on to end users through lower electricity prices in the power purchase agreements.

Committee Consideration

The committee discussed the tax structure for wind generation and the allocation of the tax collections. The committee received information regarding proposed changes to the allocation of the wind generation tax collections. Under current law the wind generation tax collections are distributed only to local political subdivisions. The proposed changes would allocate 33 percent of the tax revenue collections to the state resulting in a corresponding decrease in the allocations to political subdivisions. The proposed allocation change relates to the tax revenue collected from new wind turbines. Older wind turbines are subject to property taxes, which would remain with local political subdivisions.

Recommendation

The committee recommends changing the allocation of wind generation tax collections to distribute a portion of the revenue collections to the state.

OIL WELL REFRACTURING STUDY

The Legislative Management assigned the committee the responsibility to study the refracturing of oil wells. The committee received information from the oil industry and state agencies regarding the refracturing process and the impact of oil well refracturing.

Refracturing Process

The committee received information regarding projects to refracture oil wells originally completed between 2006 and 2009 as open-hole single stage fractures. To refracture an oil well, a workover rig cleans the well bore and installs a new cement liner, after which a fracturing crew stimulates the well with an estimated 5.5 million pounds of proppant and 110,000 barrels of water. Oil companies are researching potential methods to refracture oil wells originally completed between 2009 and 2011, which had less than 20 stage fractures. The process to refracture oil wells originally completed between 2009 and 2011 will be more complicated because the original well bore contains a cement liner leaving only 4.5 inches for new equipment and materials. Refracturing the wells originally completed between 2009 and 2011 may involve one of the following options:

- A flush joint lateral liner to accommodate plug and perforation stimulation techniques, which provides more versatility but a high cost for specialty pipe;
- A flush joint lateral liner with a slim-hole ball and seat system, which uses known technology but may be limited to wells with shorter laterals; or
- A particulate diverter using the existing lateral liner, which is the least expensive option but provides the least accuracy for directing the fractures.

Based on information provided by an oil company, the economics of refracturing an oil well are uncertain because the return on investment depends on the amount of additional oil that can be extracted from the oil well. The oil wells originally completed between 2006 and 2009 have a high return on investment because these wells have more remaining hydrocarbons than the oil wells completed after 2009. Challenges for refracturing include the cost of the technology, future operational risk associated with decreasing the diameter of the well bore, loss of production from the well while the refracturing process is being completed, geological uncertainty, and the economic competitiveness compared to other oil wells.

Refracturing Impact

The committee received information from the North Dakota Pipeline Authority regarding the potential changes in oil production related to oil well refracturing. Oil production increased by an average of 25 percent and gas production increased by an average of 100 percent based on available data for oil well refractures in North Dakota. Refracturing can produce an estimated 200,000 barrels of incremental oil per well, and approximately 2,000 wells may be candidates for refracturing. The breakeven price for refracturing depends on the estimated incremental oil production and the cost of the refracturing process. Oil well refracturing may be feasible if oil prices average at least $40 per barrel; refracturing costs remain at approximately $2 million; and incremental oil production exceeds 200,000 barrels.

According to information provided by the North Dakota Petroleum Council, refractruing oil wells originally completed between 2006 and 2009 is economically successful and may not need tax incentives. However, refracturing oil wells that were originally completed between 2009 and 2011 may need tax incentives to offset the risks and to encourage economic development. The state could receive approximately $1 million in tax revenue over the life of each oil well refractured, assuming 200,000 barrels of incremental oil production and an oil price of $40 per barrel. Of the $1 million, $800,000 is related to revenue collections from the oil extraction tax and the oil and gas gross production tax, and $200,000 is related to sales and use tax revenue collections.

The Energy and Environmental Research Center provided information to the committee regarding the results of a study related to oil well refracturing. Researchers from the Energy and Environmental Research Center analyzed the performance of 165 oil wells in the Bakken Formation that have been refractured. The researchers created a simulation to analyze hypothetical cost and revenue scenarios to determine the profitability from refracturing. The results from the simulation indicated approximately 80 percent of refractures may be profitable.

Recommendation

The committee makes no recommendation regarding its study of oil well refracturing.

COMPREHENSIVE ENERGY STUDY

The committee is responsible for studying comprehensive energy policy for the state. As part of this study, the committee received a report from the Energy Policy Commission, also known as the EmPower ND Commission.

Energy Policy Commission

In 2009 the Energy Policy Commission was created by Section 17-07-01 to develop a comprehensive energy policy and to monitor progress toward 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, Lignite Energy Council, North Dakota Petroleum Council, biodiesel industry, biomass industry, wind industry, ethanol industry, North Dakota Petroleum Marketers Association, North Dakota investor-owned electric utility industry, generation and transmission electric cooperative industry, lignite coal-producing industry, refining or gas-processing industry, and additional nonvoting members.

The committee received a report from the Energy Policy Commission regarding updates from the commission's three subcommittees--public policy, research and development, and infrastructure. The commission did not have any specific energy policy recommendations for the 2017-18 interim, but continues to promote North Dakota's energy resources. The public policy subcommittee reviewed state and federal energy policies and is supportive of state policies that will continue to provide funding for energy-related research and development. The research and development subcommittee reviewed research projects and state funding for research, including changes to the funding for the lignite research fund approved by the 2017 Legislative Assembly. The infrastructure subcommittee acknowledged significant investments have been made in pipelines, processing facilities, roads, and airports in the past 5 years, but additional infrastructure will be needed to support the growth in the energy industry.

Recommendation

The committee makes no recommendation regarding the comprehensive energy study.

NORTH DAKOTA TRANSMISSION AUTHORITY REPORT

The committee received a report from the North Dakota Transmission Authority pursuant to Section 17-05-13. According to the report, the CapX 2020 transmission line project, which includes 800 miles of lines, was completed in August 2017 and will increase electrical reliability and access to renewable energy across the Midwest. The United States Department of Energy conducted an electrical grid reliability study and recommended continued support for research and development for technology to increase reliability and resiliency in the electrical grid. The utility industry and the federal government are working on measures to increase cybersecurity protection for the electrical grid.

NORTH DAKOTA PIPELINE AUTHORITY REPORT

The committee received multiple updates from the North Dakota Pipeline Authority on oil and gas pipelines in the state. According to the information provided by the authority, 72 percent of the oil produced in North Dakota is exported out of the state by pipeline as of May 2018. The Dakota Access Pipeline began operating in June 2017 decreasing the transportation costs associated with delivering the oil to refineries. Exports by rail have increased in recent months because the pricing premiums at coastal refineries offset the higher transportation costs of rail transportation. Natural gas production exceeded the processing capacity in early 2018, but new processing plants are anticipated to begin operations in the fourth quarter of 2018. Approximately 1,000 miles of new pipelines, including gathering lines and transmission lines, are constructed each year resulting in approximately 1 mile of new pipeline for each new oil well. Infrastructure constraints might require oil companies to limit future oil and gas production, particularly when the Industrial Commission's natural gas capture requirements increase from 85 to 88 percent in November 2018.

CARBON DIOXIDE STORAGE FACILITY TRUST FUND REPORT

The committee received a report from the Industrial Commission regarding the status of the carbon dioxide facility trust fund pursuant to Section 38-22-15. The purpose of the fund is pay the expenses associated with the long-term monitoring and management of underground carbon dioxide storage projects. On April 24, 2018, North Dakota received Class VI Primacy from the federal Environmental Protection Agency giving the state the authority to regulate and manage the underground storage of carbon dioxide. As of September 30, 2018, the balance of the carbon dioxide facility trust fund is $0, and the fee established by the Industrial Commission is $.07 per ton of carbon dioxide injected underground for storage. Projects to store carbon dioxide underground are in the planning stages with estimated completion dates in the early 2020s, but no projects have been completed at the time of this report.

CARBON DIOXIDE CAPTURE TAX CREDIT REPORT

The committee was assigned the responsibility to receive a report, pursuant to Section 57-60-02.1, from a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions and receives a tax credit.

The only project in this state that received a credit is located 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. Great Plains Synfuels is a commercial coal gasification facility that produces synthetic natural gas resulting in the production of carbon dioxide, which is transported to Canada for sequestration.

A facility that achieves a 20 percent capture of carbon dioxide emissions is entitled to a 20 percent reduction in the general fund share of the coal conversion tax. The facility may receive an additional reduction of 1 percent for each 2 percentage points of captured carbon dioxide emissions up to a maximum tax reduction of 50 percent reflecting an 80 percent capture of carbon dioxide emissions. The tax credit is limited to 10 years from the date the carbon dioxide emissions were first captured or from the date the coal conversion facility became eligible for the credit. At the request of the Great Plains Synfuels Plant, the 2017 Legislative Assembly approved Senate Bill No. 2133 to end the tax credit in June 2017 and change the tax rates for the gasification plant. The schedule below provides information on the tax credits received and the carbon dioxide captured since 2010, the year in which the tax reduction first became available.

Year	Tax Credits	Average Percentage of Carbon Dioxide Captured
2010	$2.2 million	40%
2011	2.5 million	36%
2012	2.9 million	42%
2013	2.6 million	40%
2014	3.0 million	41%
2015	1.9 million	32%
2016	1.2 million	31%
2017 (Through June 2017)	.7 million	31%
Total	$17 million	

BRINE POND AND SOIL REMEDIATION STUDY REPORT

The committee received a report from the Industrial Commission regarding the studies conducted under Section 2 of House Bill No. 1347 related to brine ponds and soil remediation. The study included an analysis of the number of brine ponds that need remediation, the number of brine pond sites for which landowners received compensation due to contamination, and an evaluation of the best techniques for remediating salt and contaminants from soils. Based on the results of the study, 114 brine pond sites need remediation, including 9 sites for which landowners received compensation due to contamination. The estimated cost to remediate the sites is $11 million. Tests with additives, including gypsum and hay, revealed some contaminated soil can be restored to agricultural productivity, but additional testing is needed to determine if this remediation technique provides a lasting benefit. Techniques involving a capillary break and a saltwater wetland significantly reduced the salt and contaminant concentrations allowing the soil to be

restored to agricultural productivity. The capillary break, which is buried three feet underground, captures the salt as it leaches into the soil with rain and as it percolates up from deeper soil. The saltwater drains from the capillary break into a wetland area where salt tolerant plants extract the salt and contaminants from the water. The Industrial Commission anticipates funding will be requested during the 2019 legislative session to conduct a full-scale test of the remediation technique involving a capillary break and a saltwater wetland.

OIL AND GAS VALUATION STUDY REPORT

The committee received a report from the Tax Department regarding the results of an oil and gas valuation study pursuant to Senate Bill No. 2013 and House Bill No. 1015. The Tax Department held three meetings to gather information regarding natural gas processing, royalty agreements, and royalty owners' concerns about deductions from royalty payments. The state's royalty agreements do not allow for any deductions while individual's royalty agreements can be based on different calculation methods. The Tax Department did not have any recommended statutory changes because the royalty payments are subject to the terms negotiated between the oil producers and the mineral owners. The Industrial Commission recently changed its administrative rules requiring any deductions from the royalty payments to be disclosed on the royalty statement, which may alleviate mineral owners' concerns.

OTHER

Fracturing Sand Sources in North Dakota

The Industrial Commission informed the committee about potential sources of sand in North Dakota for use in fracturing. Each oil well in the Bakken uses approximately 10 million pounds of sand in the fracturing process. Ottawa "Northern White" sand from western Wisconsin is most commonly used in the fracturing process because of its consistent roundness and strength. High transportation costs and supply limitations have caused oil companies to seek alternative sources of sand. As a result, the oil industry recently lowered its standards to find lower cost alternatives from local sources. The Industrial Commission collected samples of sand from various locations in North Dakota in the summer of 2018. The initial test results indicate some sources of sand in North Dakota may meet the industry's new standards, but additional testing is required to determine the feasibility of using North Dakota sand in the fracturing process.

Rare Earth Elements

The committee received information regarding the Industrial Commission's study of rare earth elements in North Dakota. Rare earth elements commonly are found in advanced technology products, such as electric cars, computers, appliances, medical devices, and military equipment. Generally, rare earth elements are not found in high concentrations which limits the places where the elements can be mined economically. The United States was the largest supplier of rare earth elements until 1985 when China surpassed the United States in production. The Industrial Commission sampled various locations in western North Dakota near coal-bearing rocks to determine the concentrations of rare earth elements. The department analyzed samples and found some samples had concentrations exceeding 300 parts per million, which is the minimum threshold needed to qualify for United States Department of Energy research funding. Additional research is needed to better understand where rare earth elements can be found in high concentrations.

Biological Remediation Methods for Oil Spills

Targa Resources provided information to the committee regarding a project that used biological remediation to restore soil contaminated by an oil spill near New Town. The remediation process involves spreading the contaminated soil in a containment area and applying enzymes to support the growth of bacteria that digest hydrocarbons. The soil conditions are monitored to maintain an optimal environment for the bacteria. The biological remediation process can be used in cold climates but the cold temperatures in winter slow the rate at which the bacteria digest the hydrocarbons. Biological remediation removes the hydrocarbons from the soil allowing the soil to be reused, and biological remediation can restore the soil more quickly than other remediation methods. Federal and state regulations allow biological remediation methods to be used for certain oil spills, but a streamlined regulatory process could reduce remediation costs increasing the feasibility of biological remediation.

GOVERNMENT ADMINISTRATION COMMITTEE

The Government Administration Committee was assigned the following studies:

- Section 2 of House Bill No.1029 (2017) directed a study of 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.
- Section 2 of House Bill No. 1380 (2017) directed a study of the duties and role of the North Dakota Firefighter's Association.
- Section 1 of House Bill No. 1418 (2017) directed a study of the purpose and content of statements of interests and the forms and information required to be filed, including the appropriate financial interests and other necessary content.
- Section 9 of Senate Bill No. 2016 (2017) directed a study of office space cost and value of properties owned by Job Service North Dakota in Fargo, Rolla, Minot, and Bismarck with input from the Office of Management and Budget (OMB).
- House Concurrent Resolution No. 3016 (2017) directed a study of the desirability of moving city and other local elections from the primary election in June in even-numbered years to the general election in November in even-numbered years.
- By Legislative Management directive, the committee was assigned the responsibility to study the state's emergency medical service (EMS) system, including the EMS state grant program and how the distribution of these grants affects services available in rural areas and including a review of the availability of EMS statewide, services that are considered "access critical", and funding available to support these services.

The committee was delegated by the Legislative Management the responsibility to:

- Receive a report from OMB by October 15 of each even-numbered year, regarding the reports received by OMB from each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, of plans to operate the state agency when federal funds are reduced by 5 percent or more of the total federal funds the state agency receives, pursuant to North Dakota Century Code Section 54-27-27.1.
- Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority pursuant to Section 54-40-01.
- Receive a report from the Governor by July 1, 2018, regarding the findings and recommendations from the study of operations of the Department of Financial Institutions and the Securities Department to determine the feasibility and desirability of combining the agencies into a single department, pursuant to Section 4 of 2017 Senate Bill No. 2008.

Committee members were Representatives Scott Louser (Chairman), Lawrence R. Klemin, Kim Koppelman, Marvin E. Nelson, Christopher D. Olson, Dan Ruby, and Roscoe Streyle and Senators Randall A. Burckhard, Joan Heckaman, Dave Oehlke, and Ronald Sorvaag.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

STATUTORY AND REGULATORY REQUIREMENTS RELATING TO FEDERAL FUNDING STUDY

Section 2 of House Bill No. 1029 provided the study was 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 is refused, and whether the benefit of accepting certain federal funds outweighs the benefit of participation in the federal programs. The bill also enacted Section 54-27-27.2 to require state agencies to perform an analysis of federal grant fund applications. The study of statutory and regulatory requirements relating to federal funding was a continuation of the study assigned to the Government Finance Committee during the 2015-16 interim.

Background

Beginning with the 1987-88 interim, the Legislative Council has presented during each interim a memorandum identifying the federal funds appropriated and the estimated federal funds to be received each biennium by agency. The memorandum identifies the agency name, program name, federal funds appropriated, estimated federal funds to be

received, variance, appropriated general fund matching funds, appropriated other funds matching funds, required general fund maintenance of effort, required other funds maintenance of effort, and estimated amount of indirect costs reimbursed.

State agencies with significant federal funds appropriations during the 2015-17 biennium, and those anticipating to receive significant federal funds during the 2017-19 biennium include:

Agency	Original 2015-17 Federal Funds Appropriation	Estimated 2017-19 Federal Funds to be Received
Department of Public Instruction	$284,948,800	$270,060,734
State Department of Health	123,345,053	118,438,137
Department of Human Services	2,074,351,759	2,262,647,081
Job Service North Dakota	69,777,470	58,826,922
North Dakota Housing Finance Agency	25,227,780	31,244,828
Adjutant General	185,048,805	113,285,203
Department of Commerce	54,926,671	47,267,813
Upper Great Plains Transportation Institute	4,479,226	16,611,761
Game and Fish Department	32,735,500	37,775,000
State Water Commission	15,620,238	6,825,119
Department of Transportation	616,500,000	664,300,000
Other state agencies	104,286,663	103,433,981
Total	$3,591,247,965	$3,730,716,579

State Auditor

The State Auditor performs a "single audit" to review agency spending of federal funds on a biennial basis. Forty-six different state agencies and institutions expend federal funds and over 76 percent of the federal funds spent by state entities in fiscal years 2015 and 2016 were spent by three agencies--the Department of Human Services (DHS), the Department of Transportation, and the Department of Public Instruction (DPI). The auditors are required to obtain an understanding of the internal control over compliance for each major federal program and test the effectiveness of those controls. The compliance requirements are determined by the federal government, and the State Auditor's office is required to test all applicable federal compliance requirements.

The committee chose to focus its study on a review of federally funded programs administered by three state agencies--DPI, Department of Commerce, and the Department of Agriculture.

Department of Public Instruction

According to information provided to the committee, DPI anticipated receiving over $140.7 million in federal funds for various grant programs for the 2016-17 fiscal year, of which approximately $129.1 million is provided to individual school districts. The Department of Public Instruction receives grants from the United States Department of Agriculture (USDA), the Department of Education, the Centers for Disease Control and Prevention, and the Department of Health and Human Services. The federal programs administered by DPI include:

1. Title I - Provides financial assistance to state and local educational agencies to meet the needs of at-risk children identified as failing or most at risk of failing the state's performance standards.
2. Title I Part B - Pays the costs of the development of state assessments and standards required by the federal Every Student Succeeds Act.
3. Title I Part C - Ensures migrant students reach academic standards and graduate prepared for responsible citizenship, further learning, and productive employment.
4. Title I Part D - Improves educational services for children and youth in local and state institutions for neglected or delinquent children.
5. Title II Part A - Increases student academic achievement by improving teacher and principal quality.
6. McKinney-Vento Homeless Assistance Act - Provides homeless student services to address the problems homeless children and youth face in enrolling, attending, and succeeding in school.
7. The 21st century community learning centers - Develops or expands out-of-school programs.
8. North Dakota refugee school impact grant program - Engages in activities or provides services to benefit school districts in North Dakota with significant numbers of newly arrived refugee children and youth.
9. Title III Part A - Ensures English learners, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English.

10. Title VI Part A - Pays the costs of development of state assessments and standards required by the Elementary and Secondary Education Act.
11. Striving Readers Comprehensive Literacy - Creates a comprehensive literacy program to advance literacy skills.
12. Special Education Part B - Ensures children with disabilities have access to free public education to meet their needs and prepare them for further education, employment, and independent living.
13. North Dakota dual sensory project - Promotes academic achievement and improves results for children with disabilities.
14. Adult education - Helps adults over the age of 16 obtain basic academic and educational skills.
15. Safe Schools-Healthy Students Initiative - Coordinates the Youth Risk Behavior Survey, designed to monitor health risk behavior trends and used to plan, evaluate, and improve school and community programs.
16. School Nutrition Programs - The National School Lunch Program, the School Breakfast Program, and the After School Snack Program - Help fight hunger and obesity.
17. USDA Foods for Schools Program - Supports American agricultural producers by providing USDA-purchased food to schools and other institutions participating in the National School Lunch Program.
18. Child and Adult Care Food Program - Provides aid to child and adult care institutions and family or group day care homes to provide food for children, older adults, and disabled persons.
19. Summer Food Service Program - Reimburses providers of meals to children and teens in low-income areas at no charge during the summer months.
20. Fresh Fruit and Vegetable Program - Improves children's diet and creates healthier eating habits.
21. Team Nutrition - Provides training and technical assistance for food service, provides nutrition education for children and caregivers, and supports healthy eating and physical activity.
22. The Emergency Food Assistance Program - Supplements the diets of low-income Americans by providing emergency food and nutrition assistance at no cost.
23. Food Distribution Program on Indian Reservations - Provides foods to low-income households living on Indian reservations and Native American families residing in designated areas near reservations.
24. Commodity Supplemental Food Program - Improves the health of low-income elderly persons at least 60 years of age by supplementing their diets.
25. Special Milk Program - Provides milk to children in schools and child care institutions that do not participate in other federal meal service programs.

Certain federal programs administered by DPI do not require a local funding match and certain programs also provide support for the department's administrative costs. Requirements associated with federal programs may include various reporting and assurances of compliance with program requirements. The Department of Public Instruction completed three analyses of federal grants pursuant to Section 54-27-27.2, including a $500,000 nutrition grant, a $28.8 million striving readers grant, and a $1 million preschool development grant. The Department of Public Instruction determined acceptance of the three federal grants did not subject the state to undue federal oversight or regulations nor conflict with legislative intent.

Department of Commerce

The committee was informed the Department of Commerce has two divisions which receive federal funding--the Division of Workforce Development and the Division of Community Services. The Division of Workforce Development receives $650,000 in federal grants per year under the AmeriCorps Program to engage volunteers in direct services to help communities address unmet needs in education, public safety, health, and the environment. The Division of Community Services administers the following federal grant programs:

1. Community development block grant - Provides financial assistance to eligible units of local governments to support housing rehabilitation, public facilities, and economic development. (2017 funding - $3,674,491)
2. HOME Program - Creates partnerships between the government and the private sector to support affordable housing for low-income individuals. (2017 - $3,000,000)
3. Emergency solutions grant - Provides federal financial assistance to facilities and programs that provide temporary shelter or homeless prevention services to homeless individuals. (2017 funding - $657,162)
4. Continuum of care grant - Provides rental assistance to disabled homeless or at-risk of homelessness individuals. (2017 funding - $304,416)

5. State energy programs - Promotes energy conservation and efficiency, and reduces the rate of growth of energy demand by developing and implementing a comprehensive state energy plan. (2017 funding - $291,110)
6. Weatherization assistance - Increases the energy efficiency of dwellings owned or occupied by low-income individuals to reduce energy expenditures and improve health and safety. (2017 funding - $7,312,747)
7. Low-income home energy assistance program - Provides funds to subgrantees to repair and replace heating and cooling systems and water heaters in the case of an emergency. (2017 funding - $1,549,832)
8. Community services block grant program - Provides assistance through community action agencies to implement locally designed anti-poverty programs that include emergency assistance, money management, budgeting, housing counseling, and self-sufficient services to low-income households. (2017 funding - $3,319,321)

The federal programs under the Department of Commerce require a state general fund match of $336,898 for an estimated $47.3 million of federal funds during the 2017-19 biennium. The Department of Commerce analyzed its federally funded programs to ensure the programs were not in conflict with legislative intent as part of the department's internal accountability monitoring.

Department of Agriculture

According to information provided to the committee, federal funding of $12.1 million comprises 37 percent of the Department of Agriculture's total 2017-19 biennium budget. The Department of Agriculture administers 12 major federal grant programs, including:

1. North Dakota Mediation Services - Helps resolve disputes and helps financially distressed farmers and ranchers.
2. Specialty crop block grant - Enhances competitiveness of specialty crops.
3. Organic certification cost-share - Reimburses producers and handlers of organic agricultural products for costs of obtaining organic certification.
4. Forest Service noxious weed grants - Surveys, maps, and controls noxious and invasive weeds.
5. Pest survey - Conducts surveys to safeguard United States agricultural and environmental resources by ensuring new introductions of harmful plant pests and diseases are detected.
6. Meat inspection - Ensures meat and poultry products purchased by consumers are safe to eat and free from contamination.
7. Drug residue prevention - Creates a food animal antibiotic residue program for livestock producers.
8. Livestock pollution prevention - Provides cost-share assistance to livestock producers to mitigate environmental issues associated with feeding of livestock.
9. Food and Drug Administration feed contract work - Performs inspections on a contract basis for the Food and Drug Administration.
10. Market news - Pays for recording and publishing livestock auction market prices and sales for certain classes of livestock.
11. Pesticide performance - Enforces pesticide laws relating to water quality and endangered species.
12. Animal health - Provides for disease prevention and eradication and other animal health regulation.

The committee was informed federal funds play a significant role in the agriculture industry, and cooperation with the federal government is needed to support the viability and long-term growth of the agriculture industry. The impact of federal regulation on agriculture is a growing concern and the Department of Agriculture reviews the costs and benefits to the local agriculture industry before accepting federal funds. The committee learned state control of federal funds is important to control program implementation, especially as it relates to regulatory programs, and state-administered regulatory programs that fulfill federal requirements are more specific to the needs of state agriculture producers than a federal regulatory program would be.

Report on Federal Funds

Section 54-27-27.1 requires each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, to report to OMB a plan to operate the state agency if federal funds are reduced by 5 percent or more of the total federal funds the state agency receives. The report must include information on whether the agency will request state funds to offset the decrease in federal funds. The report is not required to address a reduction in federal funds received by the agency which is a result of:

1. A decrease in caseloads or cost per case;

2. A change in the anticipated project completion date for a construction project qualifying for federal fund reimbursement; or
3. The completion of a one-time project funded in whole or in part by federal funds.

The Office of Management and Budget is required to report to the Legislative Management by October 15 of each even-numbered year on the reports received from state agencies under this section. The report must include a summary of the reports received from state agencies on how each agency will operate with the reduction in federal funds. The Government Administration Committee was assigned responsibility for receiving this report for the 2017-18 interim.

The committee received a report from OMB in July 2018 regarding state agency plans to operate if federal funds are reduced by 5 percent or more of the total federal funds the agency receives. Due to the timing of the report, the OMB survey of state agencies was not complete. However, the committee learned six agencies, including the Information Technology Department, Tax Commissioner, School for the Deaf, Insurance Department, Aeronautics Commission, and Adjutant General, are expecting a decrease in federal funding of 5 percent or more. The committee was informed none of the six agencies intend to request state funds to offset the decrease in federal funds. Other agencies surveyed did not expect federal funding to decrease by 5 percent or more, but many have responded with actions anticipated to be taken if federal funding decreases. As of July 2018, all agencies responding indicated the programs associated with the decreased federal funding would be reduced to match the federal funding available.

Recommendation

The committee makes no recommendation regarding the study of statutory and regulatory requirements relating to federal funding.

DUTIES OF THE NORTH DAKOTA FIREFIGHTER'S ASSOCIATION STUDY

Background

The North Dakota Firemen's Association was incorporated as a North Dakota nonprofit organization and registered in the Secretary of State's office in February 1891. In October 2000, the North Dakota Firemen's Association changed its name with the Secretary of State's office to the North Dakota Firefighter's Association. In a February 2006 opinion, the Attorney General stated the North Dakota Firefighter's Association is a public entity because it is supported by public funds and it is recognized by state law to perform a governmental function. The Attorney General stated the definition of public entity is not limited to entities traditionally viewed as governmental; and a nonprofit entity like the North Dakota Firefighter's Association can be a public entity if it is supported by public funds, is expending public funds, or is recognized by state law to exercise public authority or to perform a governmental function.

Funding for the North Dakota Firefighter's Association

Section 18-03-05 requires the North Dakota Firefighter's Association to submit to OMB an itemized statement of the amount of money necessary to promote the efficiency and growth of the different fire departments and fire protection districts of the association and to conduct fire schools during the biennium.

Section 18-04-05 provides for the disbursement of funds to the North Dakota Firefighter's Association by the Insurance Commissioner from the insurance tax distribution fund. The following schedule identifies the amount of funding appropriated to the Insurance Commissioner for the purpose of providing payments to the North Dakota Firefighter's Association since the 2007-09 biennium:

	Payments to the North Dakota Firefighter's Association		
Biennium	**Insurance Tax Distribution Fund**	**State Fire and Tornado Fund**	**Total**
2007-09	$120,000	$170,000	$290,000
2009-11	$620,000	$170,000	$790,000
2011-13	$670,000[1]	$170,000	$840,000[1]
2013-15	$800,000		$800,000
2015-17	$1,020,000[2]		$1,020,000[2]
2017-19	$828,525		$828,525

[1]The 2011-13 biennium appropriation amount includes $50,000 from the insurance tax distribution fund for auto extrication training.

[2]The 2015-17 biennium appropriation amount includes $130,000 of one-time funding to create a computerized database for all data pertaining to firefighters.

The committee received information indicating the insurance premium tax has been a source of revenue for fire departments and fire districts for many years, and 100 percent of the insurance premium tax on fire-related insurance lines used to be distributed to fire departments and fire districts. However, current appropriations for distributions to fire districts and the North Dakota Firefighter's Association are approximately 67 percent of the insurance premium tax on fire-related insurance lines. The North Dakota Firefighter's Association currently receives 5.5 percent and the fire

departments and fire districts receive 94.5 percent of the amount appropriated. The insurance premium tax revenue not deposited in the insurance tax distribution fund is deposited in the state general fund.

The following schedule identifies the amount of funding appropriated from the insurance tax distribution fund to the Insurance Commissioner for the purpose of providing payments to fire departments and fire districts since the 2007-09 biennium:

Biennium	Distributions to Fire Departments
2007-09	$6,200,000
2009-11	$6,200,000
2011-13	$6,200,000
2013-15	$14,536,386
2015-17	$15,681,207
2017-19	$14,235,561

In addition to funding provided to the association by the state from the insurance tax distribution fund, the association collects dues ($40) and a library fee ($25) annually from each fire department and receives funding from various grants and donations. Section 18-03-08 requires the North Dakota Firefighter's Association to report the disposition of all money received by the association annually to OMB.

North Dakota Firefighter's Association Duties

Governor Arthur Link, in Executive Order No. 1977-3, designated the North Dakota Firemen's Association as the focal point for the state with the responsibility and authority to act or make recommendations in the following areas:

- Approval of state master plan for fire prevention and control;
- Approval of statewide education and training plan;
- Training on all levels;
- Dissemination of information;
- Formal adoption of standards;
- Advisory capacity to the Governor in all fire service matters;
- Advisory capacity to the State Fire Marshal in adoption of codes;
- Budget assistance;
- Research and development; and
- Liaison between the National Fire Prevention and Control Administration and the local level.

Section 18-03-01.1, as created by House Bill No. 1380 (2017), states the North Dakota Firefighter's Association shall:

1. Develop and adopt a statewide fire education and training plan;
2. Coordinate fire service training at all levels; and
3. Establish procedures to govern the certification process for firefighter training.

Section 18-03-02 states fire schools must be held annually under the direction of the North Dakota Firefighter's Association. Section 26.1-01-07.5 requires the North Dakota Firefighter's Association and the State Fire Marshal to assist the Insurance Commissioner in preparing maps of the fire districts of the state for use by insurers.

The committee received testimony from the North Dakota Firefighter's Association and the North Dakota Fire Chief's Association. According to the testimony, the Minnesota state model for firefighter training includes oversight from a 16-member board comprised of a multitude of stakeholders, including the chancellor of the Minnesota State Colleges and Universities system.

The testimony stated there are over 8,800 firefighters in the state and, in 2016, the North Dakota Firefighter's Association held 87 classes leading to the awarding of 6,549 certifications. The North Dakota Firefighter's Association is accredited up to fire officer 1 certification, and classes are taught to National Fire Protection Association standards.

Recommendation

The committee makes no recommendation regarding the study of the duties and role of the North Dakota Firefighter's Association.

PURPOSE AND CONTENT OF STATEMENTS OF INTERESTS STUDY

Section 1 of 2017 House Bill No. 1418 provides for a study of the purpose and content of statements of interests and the forms and information required to be filed, including the appropriate financial interests and other necessary content. The study was to include consideration of whether supplementary statements of interests or updates of information are necessary and a determination as to who is required to file statements of interests and who should be filing statements of interests. In addition, the bill provided the study was to include a review of filing deadlines and consideration of how long records should be retained.

Requirements for Statements of Interests

Under Section 16.1-09-02, each candidate for elective office and each individual appointed by the Governor to a state agency, board, bureau, commission, department, or licensing board is required to submit a signed statement of interests with the Secretary of State. However, Section 16.1-09-02 allows candidates for President or Vice President of the United States to submit a copy of the personal disclosure statement required by the Federal Election Commission in lieu of the statement of interests. When a write-in candidate who did not need to file a certificate of candidacy is elected, the elected official must submit a statement of interests after the election at the time the official submits the required oath of office. A Governor appointee must submit a statement of interests at the time the appointment is announced.

Section 16.1-09-03 provides the report must include the following information for the candidate or appointee and that person's spouse:

- The name of the business or employer and an identification of the principal source of income of both the candidate or appointee and that person's spouse;
- The name of each business or trust, not the principal source of income, in which the person making the statement, and that person's spouse, have a financial interest;
- A list of the associations or institutions with which the person making the statement, and that person's spouse, are closely associated, or for which they serve as a director or officer, and which may be affected by legislative action, in the case of a statement submitted by a legislative candidate, or action by the candidate or appointee in that person's capacity as an officeholder; and
- The identity by name of all business offices, business directorships, and fiduciary relationships the person making the statement, and that person's spouse, have held in the preceding calendar year.

Section 16.1-09-04 requires the Secretary of State to create and supply statement of interests forms, publish guidelines for completing the forms, and adopt rules, as appropriate, pertaining to the statements. There are no administrative rules regarding the statement of interests. The committee received information indicating the Secretary of State does not scan statements of interests into digital format or post the statements online. There is a $5 charge to provide a requested statement of interests form filed by a candidate for elective office or an appointed official.

Any person may file a complaint with the Attorney General or a state's attorney alleging a violation of Chapter 16.1-09 regarding statements of interests. Upon receipt of the complaint or motion, the Attorney General or state's attorney must investigate the allegation. Under Section 16.1-09-07, an intentional violation of any provision in Chapter 16.1-09 is a Class B misdemeanor, and the election or appointment of any person who commits the violation is void. However, Section 16.1-09-07 provides if the person is already in office and subject to impeachment, the person will not be removed from office. Rather, that person may be impeached or removed from office by other legal means.

Chapter 16.1-08.1 provides for campaign contribution statements to be filed by candidates for elective office. The committee received testimony suggesting the statement of interests requirements could be added to Chapter 16.1-08.1. However, appointees are not required to disclose information under Chapter 16.1-08.1.

The committee received information showing the requirements for disclosing financial interests varies significantly among other states. Thirty-three other states have an equivalent to North Dakota's statement of interests form. Of the 16 states considered to not have an equivalent, 8 do not have a statement of interests form and 8 file information online only. The states without a statement of interests form may collect similar information using other methods. Other states require details on real estate holdings, debts, gifts, and business interests with government contracts, each of which North Dakota does not specifically require to be disclosed. According to testimony, the Secretary of State's office is less concerned with changing the content of the statement of interests form than with the clarity of the information being requested on the form.

Recommendation

Although the committee is not recommending a bill, the committee recommends the 2019 Legislative Assembly favorably consider legislation that may be introduced to repeal Chapter 16.1-09 relating to statements of interests, and to include relevant provisions from Chapter 16.1-09 in Chapter 16.1-08.1.

OFFICE SPACE COST AND VALUE OF PROPERTIES OWNED BY JOB SERVICE NORTH DAKOTA STUDY

Section 9 of Senate Bill No. 2016 (2017) provided for a study of office space cost and value of properties owned by Job Service North Dakota in Fargo, Rolla, Minot, and Bismarck with input from OMB. The bill provided if Job Service North Dakota sold or leased any property identified in Section 9 before July 1, 2017, the property was not to be included in the study. Job Service North Dakota did not sell or lease any property identified in Section 9 before July 1, 2017. Therefore, properties in all four cities were included in the study.

Background

The State Free Employment Service was established in 1921 and was transferred to the Workers Compensation Bureau in 1937. Also in 1937, an unemployment compensation fund was created using contributions by employers for the payment of compensation for involuntary unemployment and an Unemployment Compensation Division was created in the Workers Compensation Bureau. The State of North Dakota has provided unemployment insurance to its residents since 1937.

The North Dakota Unemployment Compensation Division and the North Dakota State Employment Service Division were transferred out of the Workers Compensation Bureau into the newly created Employment Security Bureau in 1965. In 1979 Job Service North Dakota was created and was charged with administering the duties of the North Dakota Unemployment Compensation and State Employment Service Divisions.

Since the 2001-03 biennium, federal funding for Job Service North Dakota operations generally has remained unchanged. Temporary increases in federal funds have related to the federal American Recovery and Reinvestment Act of 2009, Reed Act distributions for unemployment insurance system modernization, and United States Department of Labor grant funding for the WyCAN (Wyoming, Colorado, Arizona, and North Dakota) consortium to develop a new unemployment insurance system. To address the ongoing funding issues, Job Service North Dakota has implemented a number of technology and business changes and reduced staffing by 208.17 full-time equivalent positions since the 2001-03 biennium.

Job Service North Dakota Office Locations

In January 2016 Job Service North Dakota announced the closing of seven offices, including the Job Service North Dakota locations in Beulah, Grafton, Harvey, New Town, Oakes, Rolla, and Valley City. Job Service North Dakota has nine regional offices located in Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, Wahpeton, and Williston. The 2009 Legislative Assembly approved House Bill No. 1118 to allow Job Service North Dakota to sell its properties in Fargo and Grafton; however, Job Service North Dakota did not exercise that authority prior to July 1, 2017. Section 21 of House Bill No. 1012 (2017) provides legislative intent that DHS purchase the Job Service North Dakota building in Grafton for use at the Life Skills and Transition Center.

The committee received the following information regarding the cost and value of office locations in Fargo, Rolla, Minot, and Bismarck:

Office	Annual Operating Costs	Estimated Market Value	Number of Employees	Clients Served per Day
Fargo	$156,143	$756,597	25	238
Minot	$73,978	$915,399	11	45
Bismarck local office	$76,048	$2,187,530	15	63
Bismarck central office	$271,090	$2,935,850	101	N/A
Rolla	$27,301	$86,173	N/A	N/A

The committee was informed Job Service North Dakota is precluded by federal regulations from generating a profit on the lease of any building and any proceeds from the sale of a building must be returned to the funding sources used to construct or purchase the building. Excess space may be leased without approval from the federal government as long as the building is being used to meet the needs of Job Service North Dakota. The rental rate for excess space in the central office would be $7.78 per square foot, the rental rate for the Rolla facility would be $8.52 per square foot, and the rental rate for excess Minot office space would be $6.56 per square foot. The rental rate is based on the operating cost of the space. The committee was informed Job Service North Dakota intends to request authority from the 2019 Legislative Assembly to sell the Rolla office building.

The committee received information indicating Job Service North Dakota is leasing excess space in the Minot office to the Bureau of Criminal Investigation. Job Service North Dakota has consolidated its operations to two of the four floors of its central office building and has notified other state agencies of the available space. The Department of Corrections and Rehabilitation has leased a portion of the available space in the central office building and 374 square feet of space in the Bismarck regional office has been leased to Cankdeska Cikana Community College. The committee was informed it is not feasible to relocate employees from the central office building to the Bismarck regional office due to capacity and security concerns. Job Service North Dakota is working with other state agencies, including DHS, to maximize the state's use of available space. The agency's goal is to make the use of space more efficient and more convenient for clients who also may use other state services.

Recommendation

The committee makes no recommendation regarding the study of office space cost and value of properties owned by Job Service North Dakota.

MOVING LOCAL ELECTIONS TO THE GENERAL ELECTION IN NOVEMBER OF EVEN-NUMBERED YEARS STUDY

House Concurrent Resolution No. 3016 (2017) provided for a study of the desirability of moving city and other local elections from the primary election in June in even-numbered years to the general election in November in even-numbered years. According to the resolution, the current system of holding local elections concurrently with primary elections may cause confusion for voters and create logistical difficulties for newly elected city officials who have to prepare budgets by early September.

North Dakota Law Regarding Election Dates

Section 40-21-02 provides city elections are held on the second Tuesday in June in each even-numbered year. Under Section 58-04-01, the electors of a township hold annual meetings on the third Tuesday in March and may elect township officers. If the annual township meeting is not held at that time, a special meeting must be called under Section 58-04-19. Additionally, under Section 58-04-02, a special meeting may be called to fill vacancies in township offices.

Pursuant to Section 15.1-09-22, a school board must hold an election each year between April 1 and June 30 to fill any vacancies. These elections may be held in conjunction with the election of a city located wholly or partially within the school district. In such cases, the school board and governing body of the city may agree to share election costs and responsibilities. Additionally, Section 15.1-09-23 authorizes a school board to hold special elections "for any lawful purpose."

Other States' City and Local Election Dates

The committee received information indicating most states either set municipal elections sometime other than the fall, or do not mandate across all jurisdictions when to hold municipal elections. However, some states hold local elections in November in even-numbered years, and others hold local elections in November in odd-numbered years.

Local Elections

The committee received testimony from the North Dakota League of Cities, North Dakota Association of Counties, and North Dakota School Boards Association. The testimony suggested moving city elections to the November general election would allow incumbent city officials with budgeting history and experience to develop the budget rather than newly elected officials with no budget background. However, the committee was informed moving city elections to the November general election may increase the physical size of the ballot, causing issues for current voting machines. Moving city elections to the November general election also could limit voter exposure to local messages and candidates.

The committee received information indicating the June primary election often costs more per vote than the November general election due to the complexity of the primary election and the difference in voter turnout between the two elections. However, moving the local elections from the June primary election to the November general election likely would shift the costs between the elections, but would not result in significant cost-savings. Also, even if local elections were moved to the November general election, paid employees would be needed at the polling places in the June primary elections.

Recommendation

The committee recommended no statutory changes be made to the timing of local elections.

EMERGENCY MEDICAL SERVICE SYSTEM STUDY

The Legislative Management Chairman assigned the committee a study of the state's EMS system, including the EMS state grant program and how the distribution of these grants affects services available in rural areas and including a review of the availability of EMS statewide, services that are considered "access critical", and funding available to

support these services. The Legislative Management directed the study in response to changes made by the State Department of Health to the rural EMS assistance grant program.

Background

Chapter 23-27 provides the State Department of Health is the licensing authority for EMS operations and may designate EMS service areas. The 2011 Legislative Assembly, in House Bill No. 1044, created Chapter 23-46 related to EMS. Section 23-46-03 requires the State Department of Health to establish and update biennially a plan for integrated EMS in the state. The plan must identify ambulance operations areas, EMS funding areas that require state financial assistance to operate a minimally reasonable level of EMS, and a minimum reasonable cost for an EMS operation. In addition, Section 23-46-02 requires the State Department of Health to establish an EMS Advisory Council and consider the recommendations of the council on the plan for integrated EMS in the state, development of EMS funding areas, development of the EMS funding areas application process and budget criteria, and other issues relating to EMS as determined by the State Health Officer.

Emergency Medical Services Funding

Total funding relating to EMS from the 2007-09 biennium through the 2017-19 biennium is summarized as follows:

Biennium	General Fund	Other Funds	Total
2007-09	$970,000	$1,550,000	$2,520,000
2009-11	$1,068,400	$3,403,500	$4,471,900
2011-13	$4,540,000	$6,141,806	$10,681,806
2013-15	$6,090,000	$8,250,000	$14,340,000
2015-17 (Adjusted)	$7,006,550	$7,250,000	$14,256,550
2017-19	$6,471,000	$1,250,000	$7,721,000

Chapter 23-46, established by 2011 House Bill No. 1044, requires the State Department of Health to determine the allocation amount of state financial assistance for each EMS funding area based on the department's determination of:

1. The minimum annual funding necessary to operate the EMS operation or service designated to operate in the ambulance funding area, based on the financial needs unique to each EMS funding area.
2. Required local matching funds commensurate with at least $10 per capita within the EMS funding area.

The State Department of Health issued its guidance in May 2017 for providing rural EMS assistance grants during the 2017-19 biennium. The department identified in application and grant guidance for the 2017-18 grants that it would subsidize ambulance services based on call volume, a change from prior fiscal year grant awards. The committee was informed the State Department of Health made the changes for the following reasons:

1. To address and overcome the challenges of operating an EMS system in a rural and frontier setting by creating an EMS system that is efficient and effective for its patients.
2. To address a reduction in available funding.
3. To improve the application process, which was lengthy, time-consuming, and complicated for EMS providers as well as the State Department of Health.

According to testimony, the State Department of Health was attempting to encourage the local EMS providers to collaborate with one another to have a local first response unit working with a regional ambulance service and the new method of awarding rural EMS assistance grants encouraged consolidation or collaboration among ambulance services. Other testimony suggested if the priority for rural EMS assistance grant funding is based only on call volume rather than geography, there will be geographic areas of critical need that may not be served. Because a small rural EMS provider may have only one emergency call per day, additional funding for that EMS operation would be needed to cover fixed costs.

The State Department of Health made additional changes to the rural EMS assistance grant program for 2018-19 grants. The EMS Advisory Council developed a funding distribution formula that includes the establishment of revenue and expense models based on run volume, compared the actual revenue and expenses of the applicant, and uses grant funds to cover a percentage of the difference. The committee was informed the new funding formula is more equitable for small rural EMS providers with lower call volumes.

Recommendation

The committee makes no recommendation regarding the study of the state's EMS system.

AGREEMENTS BETWEEN NORTH DAKOTA AND SOUTH DAKOTA

Section 54-40-01 provides 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 Administration Committee was assigned this responsibility for the 2017-18 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 2017-18 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

REPORT ON THE FEASIBILITY AND DESIRABILITY OF COMBINING THE DEPARTMENT OF FINANCIAL INSTITUTIONS AND THE SECURITIES DEPARTMENT

The committee was assigned the responsibility to receive a report from the Governor regarding the findings and recommendations from the study of operations of the Department of Financial Institutions and the Securities Department. The study was to determine the feasibility and desirability of combining the agencies into a single department, pursuant to Section 4 of Senate Bill No. 2008 (2017).

The Department of Financial Institutions is a self-funded regulatory agency responsible for the oversight of state banks, trust companies, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, credit unions, and other financial corporations doing business under the laws of North Dakota. The department conducts examinations to determine the soundness of financial institutions and monitor compliance with applicable rules and regulations.

The Securities Department regulates the offer and sale of securities and franchises in the state and protects the investing public by enforcing compliance with state laws. The department promotes public awareness of securities laws to prevent violations and to prevent investment fraud. The department also provides investor education programs.

The committee received the report from the Governor which stated the two agencies support separate and distinct regulatory policy objectives and core missions and there are no significant redundancies in the regulatory functions and operations. The report concluded there are no significant cost reduction or operational efficiencies to be gained from combining the two agencies because the removal of one director position likely would result in the creation of two deputy director positions to oversee each division. The report from Governor Burgum recommended the Department of Financial Institutions and the Securities Department not be combined.

Recommendation

The committee recommends the Legislative Management concur with the recommendation of the Governor that the Department of Financial Institutions and the Securities Department not be combined.

GOVERNMENT FINANCE COMMITTEE

The Government Finance Committee was assigned the following responsibilities:

- Study the volatility of state revenue sources pursuant to Section 35 of House Bill No. 1015 (2017).
- Study the delivery and cost of the Department of Transportation's (DOT) State Fleet Services for state agencies pursuant to Section 9 of Senate Bill No. 2001 (2017).
- Study the funding mechanisms and options available to DOT, political subdivisions, and public transportation providers, for road construction, maintenance, other transportation infrastructure needs, and transit services pursuant to Section 12 of Senate Bill No. 2012 (2017).
- Review state budget information, including monitoring the status of revenues and appropriations pursuant to a Legislative Management directive.
- Receive an annual report from DOT regarding information collected from transportation network companies during each biennium pursuant to North Dakota Century Code Section 39-34-05.
- Receive a semiannual report from 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, Adjutant General, and private parties appointed by the Governor pursuant to Section 54-60-28.
- Receive a report from DOT before July 1, 2018, regarding the results of the study on the manner in which DOT provides snow and ice control services on the state highway system pursuant to Section 10 of Senate Bill No. 2012 (2017).
- Receive a report from DOT before July 1, 2018, on the study of options to consolidate transportation facilities within Williams County and the Williston district headquarters pursuant to Section 11 of Senate Bill No. 2012 (2017).
- Receive a report from DOT and the Information Technology Department by June 30, 2018, of the results of the study on benefits of allowing wireless telecommunication infrastructure within state highway rights of way and any requirements of allowing the installation may be in the public interest, pursuant to Section 14 of Senate Bill No. 2012 (2017).
- Receive a report from the Industrial Commission by July 1, 2018, regarding the results and recommendations of the gain-sharing program study, pursuant to Section 30 of Senate Bill No. 2014 (2017).

Committee members were Senators Ronald Sorvaag (Chairman), John Grabinger, Jordan Kannianen, Lonnie J. Laffen, Gary A. Lee, and Terry M. Wanzek and Representatives Rick C. Becker, Joshua A Boschee, Jeff Delzer, Ron Guggisberg, Craig Headland, Corey Mock, Mike Nathe, Gary Paur, Brandy Pyle, Shannon M. Roers Jones, Mike Schatz, and Don Vigesaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

STUDY OF REVENUE VOLATILITY

The committee was assigned a study of the volatility of state revenue sources. The study was to include:

- The volatility of the tax base and revenue sources, including ongoing expenditures.
- The volatility and sustainability of elementary and secondary education funding, including the general fund, common schools trust fund, and foundation aid stabilization fund.
- An assessment of the ending fund balances in the general fund, budget stabilization fund, and foundation aid stabilization fund, the adequacy of the foundation aid stabilization fund relative to revenue sources, and an analysis of the other trust funds.
- Historical revenue for all years for which quality data is available.

Background Information

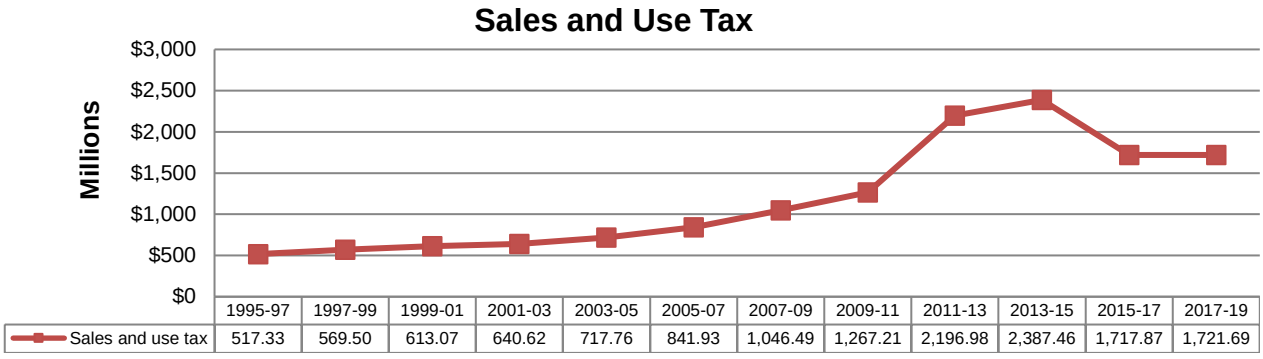
Ongoing tax and fee revenues of the general fund include sales and use tax, motor vehicle excise tax, individual income tax, corporate income tax, insurance premium tax, cigarette and tobacco tax, oil and gas gross production tax, oil extraction tax, coal conversion tax, gaming tax, wholesale liquor tax, mineral leasing fees, interest income, and departmental collections.

Sales and Use Tax and Motor Vehicle Excise Tax Revenue

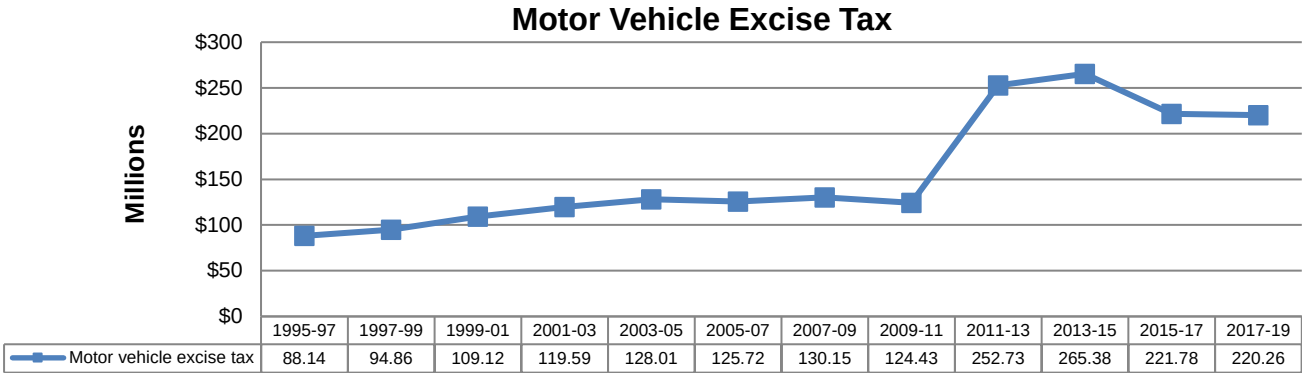
The committee reviewed taxable sales and purchases. The schedule below compares taxable sales and purchases for the first quarter of 2018 to the first quarter of 2017.

	2017 1st Quarter	2018 1st Quarter	Increase (Decrease)	Percentage Change
Counties - Total	$2,357,208,102	$2,409,592,303	$52,384,201	2.22%
Consolidated and out-of-state	1,339,215,849	1,639,835,120	300,619,271	22.45%
North Dakota - Total	$3,696,423,951	$4,049,427,423	$353,003,472	9.55%

The committee reviewed general fund revenues resulting from sales and use tax and the motor vehicle excise tax. The charts below compare general fund revenues from sales and use tax and motor vehicle excise tax collections for the 1995-97 biennium through the 2017-19 biennium. The 2017-19 biennium amounts are estimated based on actual general fund revenue collections for July 2017 through September 2017, and forecasted amounts for the remainder of the biennium.



	1995-97	1997-99	1999-01	2001-03	2003-05	2005-07	2007-09	2009-11	2011-13	2013-15	2015-17	2017-19
Sales and use tax	517.33	569.50	613.07	640.62	717.76	841.93	1,046.49	1,267.21	2,196.98	2,387.46	1,717.87	1,721.69



	1995-97	1997-99	1999-01	2001-03	2003-05	2005-07	2007-09	2009-11	2011-13	2013-15	2015-17	2017-19
Motor vehicle excise tax	88.14	94.86	109.12	119.59	128.01	125.72	130.15	124.43	252.73	265.38	221.78	220.26

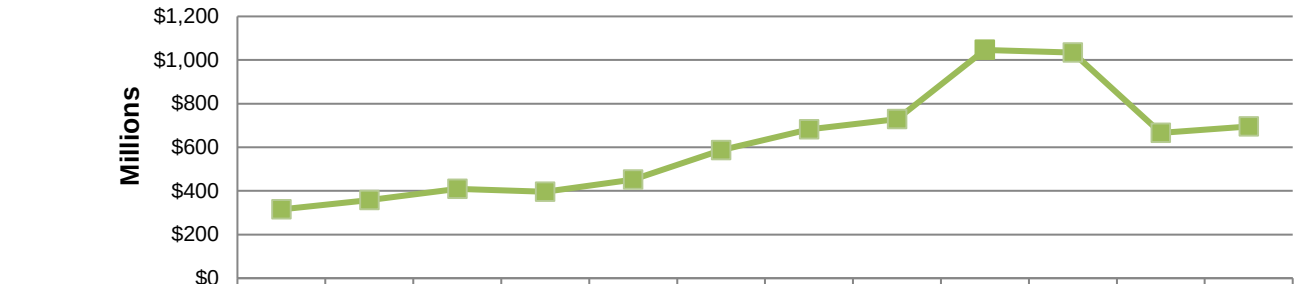
The committee received information from the State Tax Commissioner regarding trends in sales and use tax collections, including the collections from Bismarck, Fargo, and Grand Forks. Historically, sales and use tax collections for the eastern and western parts of the state trend similarly, but now are diverging. Sales tax collections from the retail sector have decreased while collections from wholesale trade and mining and oil extraction are increasing. The committee was informed a strong United States dollar leads to fewer Canadians shopping in North Dakota, which has a negative effect on retail sales.

The committee received information regarding the estimated fiscal impact on sales tax collections due to the United States Supreme Court decision in *South Dakota v. Wayfair, Inc.* The decision allows the state to collect sales tax from companies that sell online to North Dakota residents even if the company does not have a physical presence in the state. The Legislative Assembly approved Senate Bill No. 2298 (2017), which requires companies with $100,000 in gross sales or 200 transactions of online sales to register and collect sales tax even if the company does not have a physical presence in the state. The committee received updates from the Tax Department on the status of implementing provisions of the bill. The committee was informed 500 companies had registered and that all affected companies must register and begin collecting and remitting tax by October 1, 2018. Online retail companies also are required to collect the local portion of the sales and use tax. The Tax Department estimates $10 million to $15 million in additional sales and use tax revenue will be collected in the 2019-21 biennium due to the *South Dakota v. Wayfair, Inc.*, decision. Because Amazon and Walmart already have been remitting sales and use taxes, no changes are anticipated in sales and use tax collections from these larger companies that have a physical presence in the state.

Individual and Corporate Income Tax Revenue

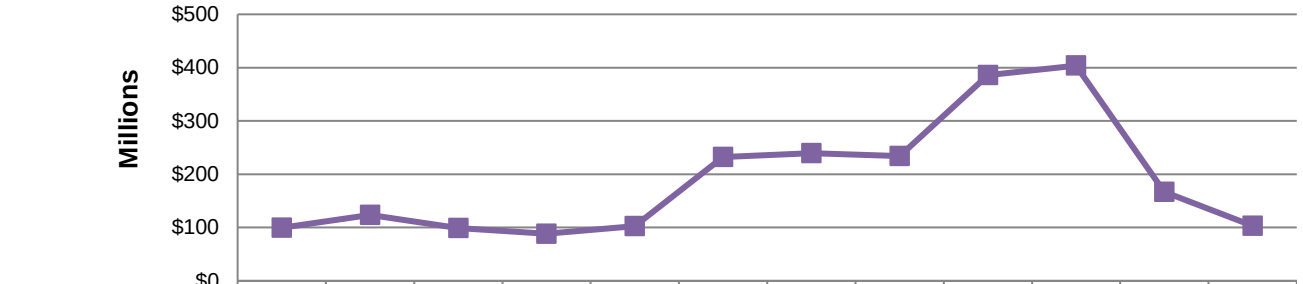
The committee reviewed general fund revenues resulting from individual and corporate income taxes. The charts below compare general fund revenues from individual and corporate income tax collections for the 1995-97 biennium through the 2017-19 biennium. The 2017-19 biennium estimate is based on actual general fund revenue collections for July 2017 through September 2017, and forecasted amounts for the remainder of the biennium.

Individual Income Tax



	1995-97	1997-99	1999-01	2001-03	2003-05	2005-07	2007-09	2009-11	2011-13	2013-15	2015-17	2017-19
Individual income tax	315.52	358.29	409.33	396.15	452.55	587.66	681.70	729.26	1,046.16	1,034.42	666.66	696.08

Corporate Income Tax



	1995-97	1997-99	1999-01	2001-03	2003-05	2005-07	2007-09	2009-11	2011-13	2013-15	2015-17	2017-19
Corporate income tax	99.35	123.42	99.13	88.42	102.93	232.29	239.70	234.36	385.81	403.71	166.81	103.18

The committee reviewed federal income tax changes resulting from Congress approving the federal Tax Cuts and Jobs Act of 2017 regarding individual income tax. The Act maintains seven individual income tax brackets, but changes tax rates in each bracket. The standard deduction increased from $6,350 to $12,000 for individuals and from $12,700 to $24,000 for married filling joint returns, personal and dependent exemptions were removed, and the child tax credit was increased from $1,000 to $2,000. The state and local tax deduction is now limited to $10,000. The Act reduces the corporate income tax rate, effective after December 31, 2017, to 21 percent compared to a variable schedule and allows a 20 percent passthrough deduction for individuals with business income from a qualified passthrough entity. The Tax Department estimates the changes to the federal tax laws will result in a reduction to 2019-21 biennium North Dakota income tax revenues from individuals and corporations by $28.9 million.

The committee received information from the Tax Department regarding the effect of the phase-in of the single sales factor corporate income tax apportionment method as authorized in Senate Bill No. 2292 (2015). The committee was informed 104 corporate income tax filers have changed their weighted sales tax factor as authorized by the 2015 Legislative Assembly and these filers are estimated to have saved $2 million in state corporate income tax by changing their sales factor method.

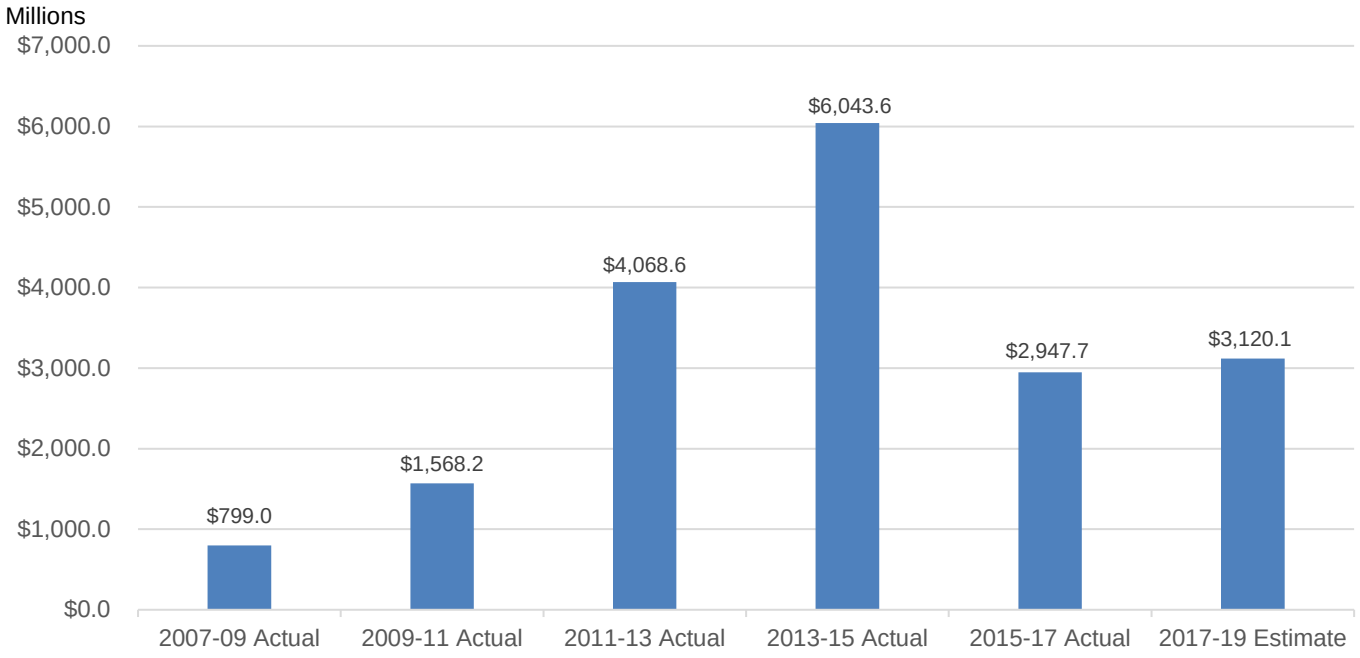
Insurance Premium Tax Revenue

The committee reviewed insurance premium tax revenue. Insurance premium tax collections have been less than projected to date during the 2017-19 biennium. The Insurance Department reported changes in property valuations affect insurance premium tax collections in the following year. In 2009 there were 48,000 licensed insurance providers in the state and in 2018, there were 75,000. Based on Office of Management and Budget's (OMB) September 2018 revenue forecast, insurance premium tax collections are anticipated to be approximately $109.3 million in the 2017-19 biennium, $20.3 million less than the legislative estimate made at the close of the 2019 legislative session and $105.5 million for the 2019-21 biennium.

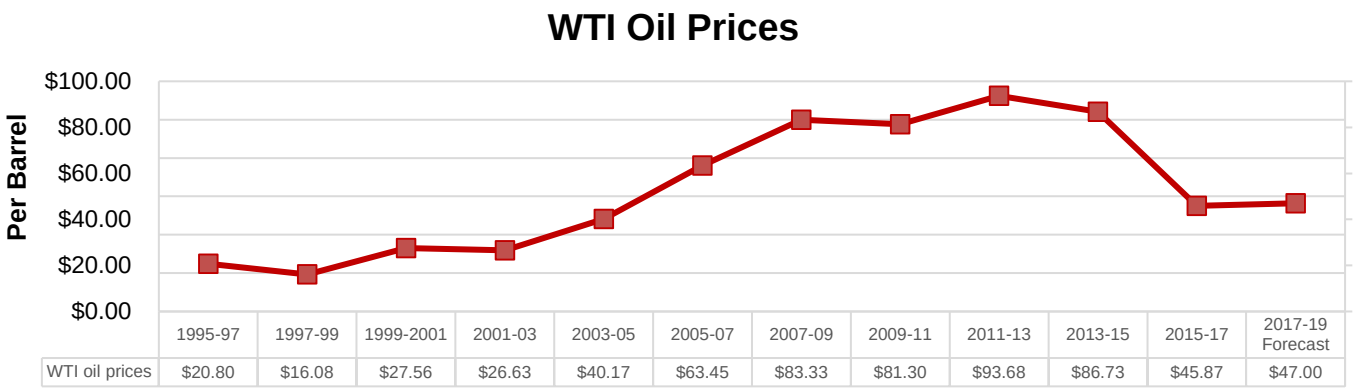
Oil and Gas Tax Revenue

The committee reviewed oil tax revenues and oil price variations.

The chart below provides information on total oil and gas gross production tax and oil extraction tax revenues from the 2007-09 biennium through the 2017-19 biennium forecast.



The schedule below provides information on West Texas Intermediate (WTI) oil prices for the 1995-97 biennium through the 2017-19 biennium forecast.



	1995-97	1997-99	1999-2001	2001-03	2003-05	2005-07	2007-09	2009-11	2011-13	2013-15	2015-17	2017-19 Forecast
WTI oil prices	$20.80	$16.08	$27.56	$26.63	$40.17	$63.45	$83.33	$81.30	$93.68	$86.73	$45.87	$47.00

North Dakota oil is discounted in comparison to WTI crude oil prices. The 2016 weighted average discount was $7.71 and from June 2017 through December 2017 the weighted average discount was $4.53, resulting in a $3.18 per barrel improvement since the Dakota Access Pipeline (DAPL) became operational. As a result, $73.1 million in additional state revenue was realized.

The Legislative Assembly has attempted to reduce the effect of volatility in oil revenues by setting up the "bucket system" in which oil tax revenues are deposited into various funds up to specified amounts. The current allocations to the state "buckets" are as follows:

1. General fund - First $200 million
2. Tax relief fund - Next $200 million
3. Budget stabilization fund - Next $75 million
4. General fund - Next $200 million

5. Lignite research fund - 20 percent of next $100 million, up to $3 million
6. Strategic investment and improvements fund - 80 percent or 100 percent of the next $100 million
7. State disaster relief fund - Next $20 million if the fund's balance does not exceed $20 million
8. Strategic investment and improvements fund - Any remaining revenues

The committee received information regarding the status of oil and gas development in the state and projected future development. The committee was informed the lack of available fracking crews is hindering production as the drilling of new wells is outpacing the fracking of wells. The committee learned 70 rigs may be operating in the state by the end of the 2017-19 biennium and 75 rigs by the end of the 2019-21 biennium. The Department of Mineral Resources estimates each well generates $57,000 in sales tax related to drilling and $94,000 in sales tax related to completion. Testimony indicated efficiencies have been realized in drill bit technology along with down hole motor technology, and the industry has developed technology that allows real time communication with the drill bit, which decreases the time to drill a well. The committee was informed a major constraint on the oil industry is natural gas capture requirements that will increase from 85 to 88 percent on November 1, 2018.

The committee reviewed the possibility of using oil puts to reduce revenue volatility. The Office of Management and Budget may request the purchase of oil and gas tax revenue put options through the State Investment Board under Section 54-44-16. According to the testimony, purchasing put options is similar to buying insurance and a premium is paid to protect against oil prices dropping. If the state would purchase a put option for an oil price of $47 per barrel, the premium cost for July 2019 through June 2020 would be $3.85 per barrel or 8.2 percent of the price per barrel. The committee reviewed an example of purchasing crude oil put options, which would cost $48.6 million to protect $1.2 billion of revenue for 18 months.

The committee received information regarding prices, volatility, and risk for government budget-related revenues. In 2015, Mexico began utilizing oil price hedges by purchasing options to lock-in prices at $76.40 as a result of its experience in the decline in oil prices. The resulting market for Mexico's oil averaged $49.78 per barrel providing it with an additional $26.62 per barrel when it exercised its oil options. The committee was informed Russia also is using this strategy.

The committee received information indicating Alberta, Canada studied hedging its oil revenue but determined it was better to address revenue volatility through fund management rather than hedging. Texas has used a collar method of hedging. The collar strategy utilizes the purchase of puts and calls, in which the cost of the put is offset by the sale of a call. Although these strategies can limit revenue volatility, the committee was informed the strategies also may result in more cost than gain.

Other Revenue

The committee reviewed other revenues including cigarette and tobacco tax, coal conversion tax, gaming tax and pari-mutuel tax, wholesale liquor tax, mineral leasing fees, interest income, and departmental collections.

Utah's Budget Stress Testing

The committee reviewed Utah's experience in stress testing its state budget. Budget stress testing includes projecting potential revenue loss scenarios and identifying the "buffers" or available resources that can limit the impact of the revenue loss.

Public School Education Funding

The committee reviewed elementary and secondary education funding. The 2017 Legislative Assembly appropriated $2,015,904,163, of which $1,409,357,258 is from the general fund for state school aid. The following table provides funding from the general fund for state school aid since the 2009-11 biennium:

Biennium	General Fund
2009-11	$1,098,077,143
2011-13	$1,223,111,478
2013-15	$1,695,374,000
2015-17	$1,668,257,237
2017-19	$1,409,357,258

The committee reviewed the common schools trust fund. Distributions from the common schools trust fund are based on a percentage of the 5-year average value of trust assets, excluding the value of lands and minerals. The unaudited fund balance of the common schools trust fund was $4,215,227,543 as of December 31, 2017. The 2017-19 biennium distributions from the fund total $288,264,000. The common schools trust fund has been providing an increasing amount for state school aid as follows:

- 2009-11 biennium - $77,178,000
- 2011-13 biennium - $92,514,000
- 2013-15 biennium - $130,326,000
- 2015-17 biennium - $206,134,000
- 2017-19 biennium - $288,264,000

The committee reviewed the foundation aid stabilization fund. The foundation aid stabilization fund provides funding to replace any general fund reductions for state school aid caused by an allotment or budget reduction due to a revenue shortfall. The June 30, 2019, balance in the foundation aid stabilization fund is estimated to be $379.6 million.

Conclusion

The committee makes no recommendation regarding the study of revenue volatility.

STUDY OF STATE FLEET SERVICES

The committee was assigned a study of the delivery and cost of DOT's State Fleet Services for state agencies. The study must include a review of the department's cost of services, staffing, and billing processes and identify improvements to the efficiency and effectiveness of the State Fleet Services that will result in reduced costs for state agencies.

Background Information

Section 24-02-03.3 requires DOT to operate a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state. The section also requires every state agency, institution, department, board, bureau, and commission, unless exempted by the Director of DOT, to use the system. Each state agency utilizing a vehicle from State Fleet Services pays a fee to State Fleet Services for the cost of the vehicle, including operating costs and the fees are based on the estimated costs of acquiring and maintaining the vehicle. State Fleet Services manages approximately 3,500 vehicles with 9 full-time equivalent positions and one temporary employee.

Agency Survey

The committee conducted a survey of state agency use of State Fleet Services. Of the 56 agencies surveyed, 48 responded to the survey. The surveys identified agencies overall were pleased with State Fleet Services; however, the following areas of concern were identified:

- Changing rates make it difficult to budget on a biennial basis.
- Agencies using specialty vehicles expressed concern regarding depreciation and costs related to changing vehicle equipment when the vehicles are replaced.
- Vehicle drop off and pick up can be an issue because of hours of operation.
- Inability to use the vehicle to travel to a store or restaurant while traveling for multiple-day meetings or conferences is inconvenient.

State Fleet Operations

The committee reviewed costs related to state fleet operations. The committee learned:

- In total, State Fleet vehicles travel approximately 1.2 million miles per biennium.
- Fuel is included in the operating rates for the use of Fleet Services vehicles.
- Vendors provide future prices for 3 years for fuel.
- A vehicle is assigned to an agency if the use is expected to be in excess of 5,000 miles per year.
- Approximately 400 new vehicles are purchased annually.
- The budget for State Fleet Services for the 2017-19 biennium is approximately $71 million with operating costs of $36.3 million and capital asset costs of $34.7 million.

The committee reviewed State Fleet Services rates for selected vehicle types. The schedule below lists select vehicle types and mileage rates charged in the 2017-19 biennium and anticipated charges for the 2019-21 biennium.

Biennium Fleet Motor Pool Vehicle Budget Guidelines		
Vehicle Type	**2017-19 Operating and Depreciation Rate (per mile)**	**2019-21 Operating and Depreciation Rate (per mile)**
Mini passenger van	$0.61	$0.52
Sedan/wagon	$0.42	$0.43
Heavy pickup/van/full-size utility	$0.76	$0.65
Highway Patrol vehicle	$0.66	$0.69

Privatization of State Fleet Services

The committee reviewed the potential to privatize all or a portion of State Fleet Services. The committee was informed Enterprise Holdings Inc. (EHI) works with many states to help identify efficiencies in motor pool operations and could assist the state with fiscal responsibility, efficiency, technology, safety, and employee satisfaction. Enterprise Holdings Inc. conducted a preliminary review of North Dakota's State Fleet and determined EHI could improve the cost-effectiveness of Fleet Services. Areas of opportunity for savings include a reduction of the motor pool to eliminate limited-use vehicles, providing flexibility in fleet size, and addressing vehicle choice.

Conclusion

The committee makes no recommendation regarding the study of State Fleet Services.

STUDY OF TRANSPORTATION-RELATED FUNDING

The committee was assigned a study of the funding mechanisms and options available to DOT, political subdivisions, and public transportation providers, for road construction, maintenance, other transportation infrastructure needs, and transit services.

Background Information

The committee reviewed constitutional and statutory requirements for transportation revenue; the legislative history of the motor vehicle fuels tax, special fuels excise tax, and motor vehicle registration fees; the history of DOT revenue; the history of fuel consumption and miles traveled in North Dakota; transportation funding mechanisms available to political subdivisions; and transportation funding mechanisms available to public transportation providers.

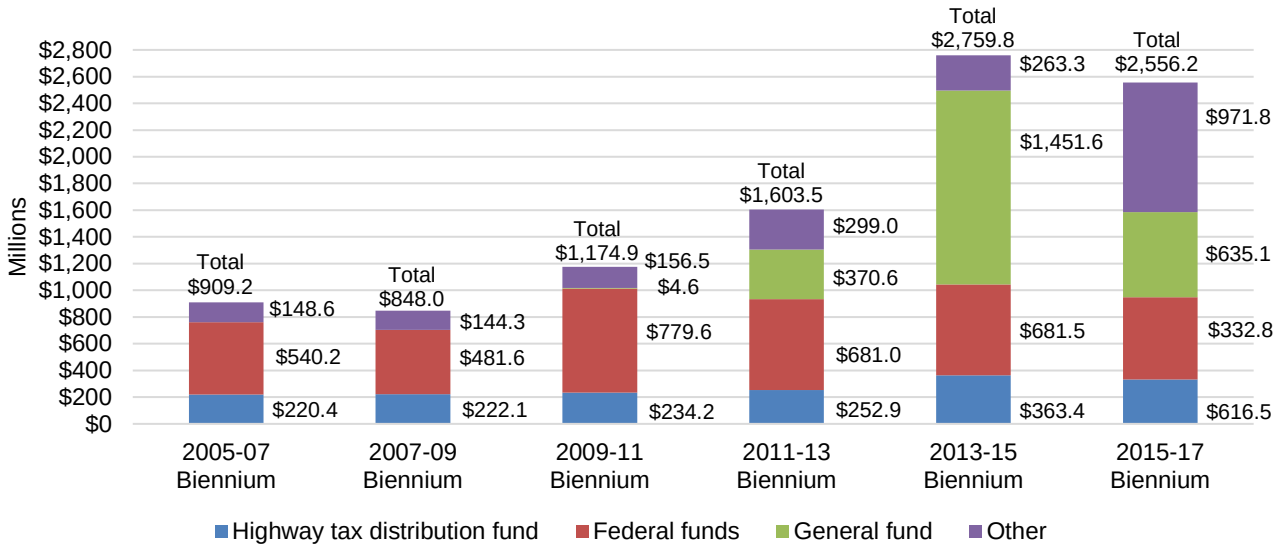
The state motor fuels tax is 23 cents per gallon. Revenues generated from motor fuels taxes and motor vehicle registration fees are deposited in the highway tax distribution fund and allocated as follows:

- State highway fund - 61.3 percent
- Counties - 22.0 percent
- Cities - 12.5 percent
- Townships - 2.7 percent
- Public transportation fund - 1.5 percent

The following table and chart compare DOT revenues from the 2005-07 biennium through the 2015-17 biennium.

State Highway Fund Revenues (Amounts Shown in Millions)							
Source	**2005-07 Biennium**	**2007-09 Biennium**	**2009-11 Biennium**	**2011-13 Biennium**	**2013-15 Biennium**	**2015-17 Biennium**	**2017-19 Biennium Estimate**
Highway tax distribution fund	$220.4	$222.1	$234.2	$252.9	$363.4	$332.8	$321.5
Federal funds	540.2	481.6	779.6	681.0	681.5	616.5	673.4
General fund			4.6	370.6	1,451.6	635.1	
Other[1]	148.6	144.3	156.5	299.0	263.3	971.8	208.0
Total	$909.2	$848.0	$1,174.9	$1,603.5	$2,759.8	$2,556.2	$1,202.9

[1]Other revenue sources include new and used dealer fees, truck regulatory driver's license fees, fleet services, credit card fees, record access fees, hay bids, road materials, and other miscellaneous fees. The amount shown for the 2015-17 biennium includes funding from the strategic investment and improvements fund for enhanced highway investments and distributions to counties.



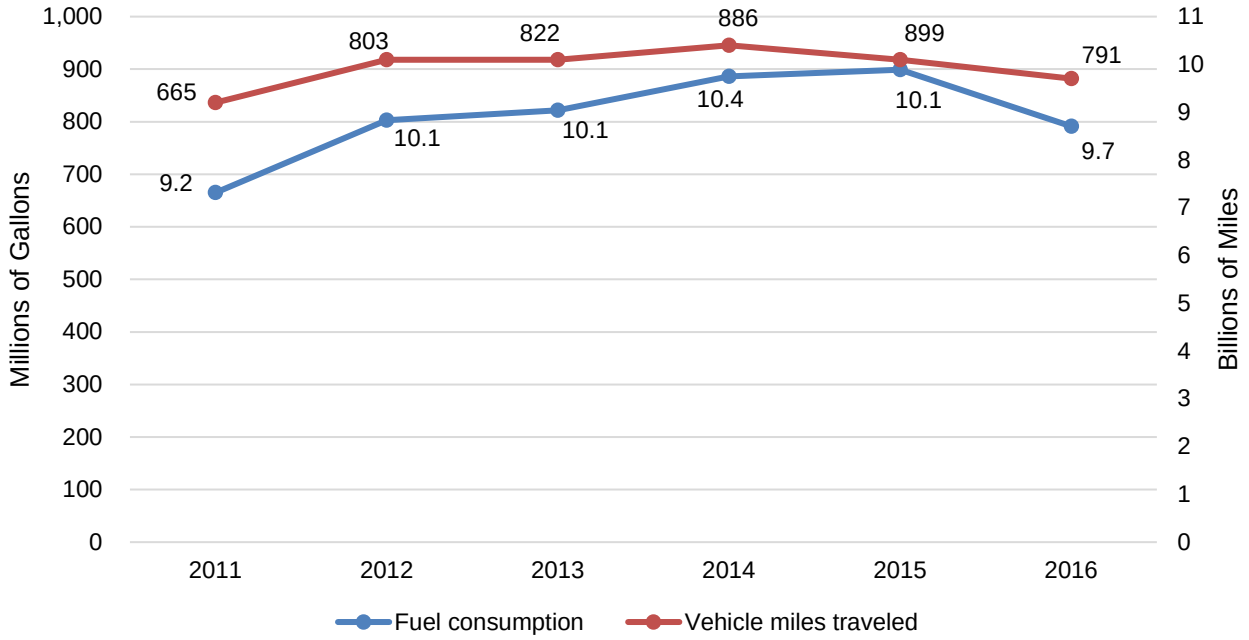
Political subdivisions receive funding through special state funding distributions, allocations from the highway tax distribution fund revenues, property tax assessments, other sales and use taxes, bonding and financing, and federal funds received through DOT.

Public transportation providers receive funding from special state funding distributions, the highway tax distribution fund, user fees, bonding and financing, and federal funds from the Federal Transit Administration.

HISTORY OF FUEL CONSUMPTION AND MILES TRAVELED IN NORTH DAKOTA

The following table and chart compare annual fuel consumption to vehicle miles traveled from calendar years 2011 through 2016.

	Fuel Consumption and Miles Traveled (Calendar Years) (Amounts Shown in Millions)					
	2011	**2012**	**2013**	**2014**	**2015**	**2016**
State fuel consumption	665	803	822	886	899	791
State vehicle miles traveled	9,166	10,093	10,100	10,437	10,079	9,740



Road and Transportation Needs

The committee received information from DOT, counties, and cities regarding transportation needs. Based on the Upper Great Plains Transportation Institute's road needs studies, the state has a $450 million per year shortfall in funding for needed road projects and counties and townships have a $495 million per year funding shortfall for needed road projects. For cities, funding from the state aid distribution fund has decreased 24 to 49 percent depending on the city, and state highway tax distribution revenue has decreased 16 to 17 percent in the last 2 years.

Federal Transportation Funding

The committee received information regarding federal transportation funding. The committee was informed North Dakota's level of federal highway funding has remained relatively constant over the last 10 years and DOT does not anticipate any significant changes during the 2019-21 biennium. The department anticipates receiving $673 million of federal highway funds in the 2019-21 biennium, which would require state matching funds of $170 million, of which $116 million would be from state sources and $54 million from local sources. Based on current projections, representatives of the department believe the department will not have sufficient funds to match the federal highway funds available for the 2019-21 biennium.

Future of Motor Fuels Tax

The committee received information relating to the future of the motor fuels tax. The committee received information indicating due to continuing increases in fuel efficiency and a shift to electric vehicles, motor fuels tax revenue will decrease while miles traveled will increase. Between 2008 and 2014, the average fuel efficiency of cars increased by 22 percent. A Bloomberg Energy study of electric vehicles indicates electric vehicles will consist of 34 percent of new vehicle sales by 2040. Information provided to the committee indicated states, in the short term, can increase motor fuels taxes, but the increase will not solve the growing disparity between fuel consumption and miles traveled, and in the long term, states will need to focus on alternative revenue sources.

Other State's Transportation Funding Options

The committee reviewed transportation funding options used by other states. The committee reviewed the following methods used by other states to provide additional funding for transportation projects--dedicated general sales taxes, the use of public-private partnerships to finance projects, road-use charges, and tolling.

Options for Additional Highway-Related Revenues

The committee received information on potential additional revenue sources for the state highway fund including the estimated annual revenue the options could generate:

- Motor fuel tax - A one cent per gallon motor fuel tax increase would generate an estimated $7.4 million per year, of which $4.5 million would be deposited in the state highway fund.
- Vehicle registration fees - A $10 increase in annual registration fees would generate an estimated $10 million per year, of which $6.1 million would be deposited in the state highway fund.
- Fuel sales tax - A percent tax levied by the state at the point of fuel purchase. Based on a $2.50 average cost per gallon of fuel and an average annual consumption of 734 million gallons, a 1 percent fuel sales tax would generate $18.35 million per year, of which $11.25 million would be deposited in the state highway fund.
- Nonfuel sales tax - A percent tax charged on goods and services dedicated for transportation funding. Based on 2016 sales tax collections, a one-tenth of a percentage general sales tax dedicated to transportation would generate an estimated $30 million per year of which $18.39 million would be deposited in the state highway fund.
- Vehicle sales excise tax (state) - A percent tax charged on the purchase of a new or used vehicle. Based on 2016 motor vehicle sales, the motor vehicle excise tax generates an estimated $105 million per year. If this revenue was deposited in the highway tax distribution fund rather than the general fund, it would provide the state highway fund $64.37 million after distributions.
- Per-mile tax - A per-mile tax, also known as vehicle miles traveled tax, is a tax based on the number of miles a vehicle is driven. A per mile tax would require an electronic reporting mechanism, annual mileage checks, or self-reporting. The Western Association of State Highway and Transportation Officials has been discussing the use of vehicle miles traveled as a method for generating revenue to support transportation infrastructure and methods to coordinate across state borders. A revenue estimate is not available.
- Value capture - Value capture utilizes the concept that a public investment such as transportation infrastructure may increase adjacent land value. Value capture would convert a portion of the increased property value resulting from new transportation infrastructure as revenue through some taxation method. The revenue would be used for transportation purposes. A revenue estimate is not available.

Design-Build and P3 Construction Methods

The committee reviewed the design-build construction methods and public-private partnership (P3) construction methods. The committee was informed most construction projects in the United States are design-bid-build construction projects in which a design firm is hired and the project is submitted for bidding at which time a builder is selected. In the design-build construction method, one firm is selected for both the design and construction portions of the project. According to testimony, the design-build method of construction is beneficial when cost is less important than time. This method removes the bidding process, which takes time.

The P3 method of construction is the design-build method with the firm also providing financing. This type of project can be attractive when the owner does not have money available. An example is a toll road in which the firm designs, builds, finances, and enters a long-term contract to operate and collect revenues from the use of the road.

Section 24-02-45.1 authorizes the Director of DOT to enter cooperative agreements with private entities for the construction of an item on the state highway system, which will benefit the private entity and the traveling public. The committee received a report indicating DOT has entered these types of agreements generally with a city or county. The city or county receives funds from the private entity and the project is constructed with the funds received by the city or county. The Department of Transportation has participated in small PPP projects, but larger projects, which could include tolls, would need to be considered and approved by the Legislative Assembly.

The committee received information from other interested persons regarding the design-build delivery method of construction for highway projects. Major comments and concerns include:

- The design-build method reduces competition.
- The design-build method limits opportunities for subcontractors to participate in a project.
- When public funds are used on a project, all organizations should have an opportunity to bid on the project.

Department of Transportation Fees and Related Costs

The committee received information regarding fees charged and costs incurred for certain DOT functions. According to the testimony, the actual cost to produce and deliver a set of license plates is $9.95, including $5.95 for the plates and $4.00 for postage. The department charges a fee of $5.00 for a set of plates, which is set in statute.

The state's cost to produce a driver's license is $21.25 and the fee charged is $15.00. The fee amount is set in statute. The committee was informed DOT would need to increase the 6-year driver's license fee by $26, from $15 to $41 to generate sufficient revenue to cover the cost of producing a driver's license.

Conclusion

The committee makes no recommendation regarding the study of transportation-related funding.

STATE BUDGET INFORMATION

The Chairman of the Legislative Management assigned the committee various budget-related duties, including monitoring state revenues and expenses.

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 2017-19 biennium general fund and selected special fund ending balance estimates:

Fund	Estimated Balance - June 30, 2019 (Revised as of June 2018)	Estimated Balance - June 30, 2019 (Original Legislative Forecast)	Balance Variance from the Original Legislative Forecast
General fund	$191,190,274[1]	$50,443,629	$140,746,645
Budget stabilization fund	$113,958,668	$75,000,000	$38,958,668
Legacy fund	$5,562,354,964	$5,131,779,229	$430,575,735
Foundation aid stabilization fund	$379,608,902	$377,795,150	$1,813,752
Tax relief fund	$182,300,000	$182,300,000	$0
Strategic investment and improvements fund (undesignated)	$456,395,311	$372,560,249	$83,835,062

[1]Estimate as of August 2018.

2017-19 Preliminary General Fund Revenue Forecast

The committee received information regarding OMB's revised general fund revenue forecast for the 2017-19 biennium and the preliminary 2019-21 biennium general fund revenue forecast. The following schedule compares the forecasts:

Ongoing General Fund Revenue Forecasts					
	2017-19 Biennium			2019-21 Biennium	
Tax Type	2017-19 Biennium Original Legislative Estimates	September 2018 Revised 2017-19 Biennium Forecast	Change	2019-21 Biennium Preliminary Forecast	Change From 2017-19 Biennium Revised Forecast
Sales and use	$1,701,747,285	$1,722,635,206	$20,887,921	$1,894,204,000	$171,568,794
Motor vehicle excise	220,003,000	231,144,237	11,141,237	245,972,000	14,827,763
Individual income	698,728,000	757,683,125	58,955,125	806,483,000	48,799,875
Corporate income	102,088,415	164,894,170	62,805,755	95,486,000	(69,408,170)
Insurance premium	129,637,121	109,325,897	(20,311,224)	105,500,000	(3,825,897)
Gaming	7,301,480	6,528,321	(773,159)	6,850,000	321,679
Cigarette and tobacco	53,247,000	52,054,548	(1,192,452)	48,281,000	(3,773,548)
Wholesale liquor	18,083,000	17,877,575	(205,425)	18,757,000	879,425
Coal conversion	39,564,000	41,937,227	2,373,227	38,032,000	(3,905,227)
Mineral leasing fees	30,500,000	31,930,066	1,430,066	32,000,000	69,934
Departmental collections	81,983,864	83,429,676	1,445,812	84,000,000	570,324
Interest	8,000,000	7,944,852	(55,148)	8,200,000	255,148
Total	$3,090,883,165	$3,227,384,900	$136,501,735	$3,383,765,000	$156,380,100

Oil and Gas Tax Revenues and Allocations

The committee received information regarding OMB's revised estimate of oil and gas production and oil extraction revenues and allocations for the 2017-19 biennium and OMB's preliminary estimates for the 2019-21 biennium.

Estimated Allocations of Oil and Gas Production and Oil Extraction Taxes					
	2017-19 Biennium Legislative Estimates	September 2018 Revised 2017-19 Biennium Forecast	Change	2019-21 Biennium Preliminary Forecast	Change From 2017-19 Biennium Revised Forecast
Legacy fund	$865,827,862	$1,243,174,990	$377,347,128	$1,309,762,247	$66,587,257
Tribal share	233,972,756	440,328,146	206,355,389	463,632,654	23,304,508
Oil and gas research fund	10,000,000	10,000,000	0	10,000,000	0
Oil and gas impact grant fund	29,145,670	28,353,446	(792,224)	5,000,000	(23,353,446)
Political subdivisions	499,644,769	666,578,370	166,933,601	679,911,951	13,333,581
Abandoned well reclamation fund	8,435,599	8,399,588	(36,011)	15,000,000	6,600,412
North Dakota outdoor heritage fund	10,871,198	10,799,177	(72,021)	31,539,766	20,740,589
Foundation aid stabilization fund	130,926,961	179,803,662	48,876,701	193,100,610	13,296,948
Common schools trust fund	130,926,961	179,803,662	48,876,701	193,100,610	13,296,948
Resources trust fund	258,653,919	356,407,324	97,753,405	382,001,221	25,593,897
Energy conservation grant fund	200,000	200,000	0	1,200,000	1,000,000
Renewable energy development fund	3,000,000	3,000,000	0	3,000,000	0
General fund	400,000,000	400,000,000	0	300,000,000	(100,000,000)
Tax relief fund	200,000,000	200,000,000	0	200,000,000	0
Strategic investment and improvements fund	256,459,929	775,396,416	518,936,487	964,257,750	188,861,334
Budget stabilization fund	75,000,000	75,000,000	0	75,000,000	0
Energy impact fund	4,000,000	4,000,000	0	0	(4,000,000)
Lignite research fund	3,000,000	3,000,000	0	3,000,000	0
State disaster relief fund	0	0	0	0	0
Total	$3,120,065,624	$4,584,244,781	$1,464,179,156	$4,829,506,809	$245,262,028

Other Budget-Related Reports Received

The committee received Legislative Council reports including the *State Budget Actions for the 2017-19 Biennium* report, the *2017-19 Biennium Report on Compliance With Legislative Intent*, and the June 2018 *Analysis of Major State Trust Funds for the 2015-17 and 2017-19 Bienniums*.

TRANSPORTATION NETWORK COMPANIES REPORT

The committee received the annual report from DOT regarding information collected from transportation network companies pursuant to Section 39-34-05.

Section 39-34-05 requires transportation network companies to report the following information to DOT:

- A list of political subdivisions in which the transportation network company operates;

- The number of accidents reported to the transportation network company during the passenger on-board stage; and
- The number and types of traffic violations and other violations reported to the transportation network company during the passenger on-board stage.

Section 39-34-05 also requires DOT to report the information collected from the transportation network companies to the Legislative Management.

A transportation network company, as defined in Section 26.1-40.1-01, means a person operating in this state which enables prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with independent participating drivers using a personal vehicle.

The Department of Transportation reported the following:

- Political subdivisions in which a transportation network company operates:

  Uber: Alice, Almont, Amenia, Argusville, Arthur, Ayr, Bismarck, Braddock, Briarwood, Buffalo, Casselton, Davenport, Emerado, Fargo, Flasher, Frontier, Gardner, Gilby, Glen Ullin, Grand Forks, Grandin, Hague, Harwood, Hazelton, Hebron, Horace, Hunter, Inkster, Kindred, Larimore, Leonard, Lincoln, Linton, Mandan, Manvel, Mapleton, New Salem, Niagara, North River, Northwood, Oxbow, Page, Prairie Rose, Reile's Acres, Regan, Reynolds, Strasburg, Thompson, Tower City, West Fargo, and Wing

  Lyft: Baldwin, Bismarck, Fargo, Grand Forks, Hickson, Mandan, Menoken, Thompson, and West Fargo
- The number of accidents reported to the transportation network company during the passenger on-board stage:

  Uber--Six

  Lyft--None
- The number and types of traffic violations and any other violations reported to the transportation network company during the passenger on-board stage:

  Uber--None

  Lyft--None

SNOW AND ICE CONTROL SERVICES REPORT

The committee received a report from DOT regarding the results of the study on the manner in which DOT provides snow and ice control services on the state highway system pursuant to Section 10 of Senate Bill No. 2012 (2017).

The Department of Transportation reported it reviewed its existing locations, population centers, public health facilities, and schools, and applied a 25-mile radius around existing section locations to help identify redundancies and to identify potential improvements. The study found the need for 327 routes and the optimization model created uniform cycle times based on levels of service across the state, resulting in an estimated 19 percent reduction in mileage and an 8 percent reduction in plowing time in comparison to the DOT's previous cycle times and routes. The study cost $200,000 to $210,000 and the state owns the program to conduct further modeling as necessary.

WILLIAMS COUNTY AND WILLISTON DISTRICT TRANSPORTATION FACILITY CONSOLIDATION REPORT

The committee received a report from DOT on the study of options to consolidate transportation facilities within Williams County and the Williston district headquarters pursuant to Section 11 of Senate Bill No. 2012 (2017).

The Department of Transportation reported it determined the consolidation of facilities would not be beneficial due to the cost of the infrastructure needed.

WIRELESS TELECOMMUNICATION INFRASTRUCTURE REPORT

The committee received a report from DOT and the Information Technology Department of the results of the study on benefits of allowing wireless telecommunication infrastructure within state highway rights of way and what, if any, requirements of allowing the installation may be in the public interest, pursuant to Section 14 of Senate Bill No. 2012 (2017).

The Department of Transportation reported the study was a cooperative study with the Information Technology Department. As a result of the study, the departments recommend companies work with adjacent landowners and only consider right-of-way access if there is no other alternative. According to the study, cellular companies have been

submitting requests to install equipment within state highway rights of way and the companies find it more cost-effective to install small transmitters on existing structures along the highway. The DOT indicated the items, if approved, would be installed or constructed on the area of the right of way furthest from the roadway.

UNMANNED AIRCRAFT SYSTEMS TEST SITE REPORT

The committee received reports from 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, Adjutant General, and private parties appointed by the Governor pursuant to Section 54-60-28.

The Department of Commerce reported the initial congressional mandate in 2012 was to expire in February 2017, but because of the federal Safety and Security Act of 2016, the program was extended through September 30, 2019. The test site is working with the Federal Aviation Administration and Xcel Energy Inc. to test and enable beyond visual line-of-sight approval for Xcel Energy to conduct transmission line inspections using unmanned aircraft systems. The National Aeronautics and Space Administration has recognized the test site as a research partner.

GAIN-SHARING PROGRAM REPORT

The committee received a report from the Industrial Commission regarding the results and recommendations of the gain-sharing program study of the Mill and Elevator, pursuant to Section 30 of Senate Bill No. 2014 (2017).

As a result of the study, the Industrial Commission reported the gain-sharing program at the Mill and Elevator is financially feasible. The study included an earnings analysis along with consideration of compensation data comparisons and other financial and nonfinancial aspects of maintaining the gain-sharing program. According to the report, although not required, 25 percent of the employees at the Mill and Elevator work 7 days a week because the mill operates 24 hours every day. The employees have chosen to operate on three shift rotations rather than four shift rotations and the Mill and Elevator uses the option to work 7 days a week as a tool to improve employee efficiency and to retain employees.

HEALTH CARE REFORM REVIEW COMMITTEE

The Health Care Reform Review Committee was assigned three charges.

The Legislative Management directed the committee to monitor and review proposed federal changes to the federal Affordable Care Act (ACA).

The Legislative Management directed the committee to study the public employee health insurance plan, including the feasibility and desirability of transitioning to a self-insurance plan. The study must include a review of the current plan and consideration of the costs and benefits of the current plan compared to the costs and benefits of a self-insurance plan.

Section 32 of House Bill No 1012 (2017) directed a study of options to operate the state medical assistance program and other related programs, as managed care. The study must identify and review populations to consider for managed care, including individuals eligible under traditional medical assistance, Medicaid Expansion, the children's health insurance program (CHIP), and individuals receiving services through the long-term care and developmental disabilities programs; consider the needs of individuals receiving services from managed care programs in similar-sized states, and the alignment of benefit packages; review populations covered by the program of all-inclusive care for the elderly in other states; consider options for including services under a managed care arrangement; consider developing a proposed plan, cost estimates, and potential timeline for implementing the managed care options identified; and consider preparing and distributing a request for information from managed care organizations regarding the managed care options identified.

Committee members were Representatives George J. Keiser (Chairman), Rick C. Becker, Bill Devlin, Gretchen Dobervich, Kathy Hogan, Jim Kasper, Mike Lefor, Karen M. Rohr, and Robin Weisz and Senators Dick Dever, Jerry Klein, Karen K. Krebsbach, Oley Larsen, Judy Lee, Carolyn C. Nelson, and Nicole Poolman.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

AFFORDABLE CARE ACT STUDY

Background

In March 2010 President Barack Obama signed into law two pieces of legislation that laid the foundation for a multiyear effort to implement health care reform in the United States--the Patient Protection and Affordable Care Act (House Resolution No. 3590) and the Health Care and Education Reconciliation Act of 2010 (House Resolution No. 4872)--which together are referred to as ACA. The Affordable Care Act affects states in multiple areas, including insurance regulation, taxes, human services, labor laws, and employee benefits.

Since enactment of 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.

Health Benefit Exchanges

During the November 2011 special legislative session, the Legislative Assembly did not enact legislation providing for a state-administered health benefit exchange or to allow for state participation in a federally administered health benefit exchange; therefore, the state is allowing the federal government to administer its health benefit exchange. A state may alter its exchange structure and administration model by submitting an exchange blueprint and having it approved by the United States Department of Health and Human Services (HHS).

Essential Health Benefits

Starting January 1, 2014, ACA required individual and small group plans to include all essential health benefits, 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 health benefits package.

For the initial plan year, 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 Program 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 was the nongrandfathered small group plan with the largest enrollment in the state, which in North Dakota 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, the largest insured commercial non-Medicaid HMO operating in the state. This benchmark plan applied in 2014, 2015, and 2016 plan years.

For plan years 2017 and beyond, the federal government again directed the states to select their essential health benefits. The basic process for selecting the state's employee health benefits package was the same as before; however, the federal government selected a June 1, 2015, deadline for states to make this selection. Again, if a state failed to choose a benchmark plan by the federal deadline, the default plan was the nongrandfathered small group plan with the largest enrollment in the state. The 2015-16 interim Health Care Reform Review Committee recommended to the Legislative Management the state choose the default plan. For plan years 2017, 2018, and 2019, the state's essential health benefits are based on the new default benchmark plan.

Medicaid Expansion

As enacted, ACA provided for all states to expand Medicaid coverage to eligible state residents with incomes below 138 percent of the federal poverty level. Failure to comply with this 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 states have the option of expanding Medicaid under ACA. A state that does not expand Medicaid is not subject to penalties under ACA.

Section 1 of House Bill No. 1362 (2013) enacted Section 50-24.1-37, directing the Department of Human Services (DHS) to expand the state's Medicaid program coverage as authorized under ACA. The department was directed to implement the expansion by bidding through private carriers or utilizing the health benefit exchange. The 2013 legislative measure became effective January 1, 2014, and had an August 1, 2017, expiration date. In 2017 the Legislative Assembly extended the expiration date to August 1, 2019, with a contingent repeal of the Medicaid Expansion program if the federal government ends the Medicaid Expansion program.

Previous Legislative Studies

Beginning with the passage of ACA in March of 2010, the Legislative Management has been studying the implementation of ACA. During the 2009-10 interim, the Industry, Business, and Labor Committee incorporated a study of ACA as part of the committee's charge to study factors impacting the cost of health insurance and health insurance company reserves. During the 2011-12, 2013-14, and 2015-16 interims, the Health Care Reform Review Committee pursued the specific charge to study the implementation of ACA and the state's health care delivery system.

Testimony

At each of the eight committee meetings held during the 2017-18 interim, the committee agenda included an ACA status report from the Insurance Department which typically included an ACA implementation update and an update on

ACA federal initiatives. The status reports were regularly accompanied by a health insurance carrier panel discussion regarding related ACA topics.

In addition to receiving ACA status reports, the committee received updates on activities of other states regarding pursuit of ACA Section 1332 State Innovation Waivers, which allow states to pursue innovative strategies for providing residents with access to high-quality affordable health insurance while retaining the basic protections of the ACA. At the end of the interim, the committee received a report from the Insurance Department on the results its efforts to study possible opportunities for the state to purse a Section 1332 State Innovation Waiver.

Federal Initiatives

The committee received updates on federal initiatives impacting the ACA. Some of these initiatives were accomplished through legislation and some through executive order.

The federal Tax Cuts and Jobs Act of 2017 reduced the ACA individual mandate to $0. This reduction will be effective for insurance coverage during 2019, for taxes filed 2020.

The continuing resolution to fund the federal government passed by Congress on January 22, 2018, impacted the ACA in a number of ways:

- Extension of the federal children's health insurance program funding for 6 years.
- Moratorium on the ACA Health Insurance Tax (HIT) for 2019;
- Extension of the moratorium on the ACA "Cadillac tax" and the medical device tax for 2 years, through 2022; and
- Suspension of the Medical Device Tax for 2 years, 2018 and 2019.

Executive Order 13813, signed by President Donald J. Trump on October 12, 2017, directs federal agencies to modify how the ACA is implemented. In a separate announcement made the same day this order was signed, the President announced he would end cost-sharing reductions (CSRs) to health insurance companies that sell to low-income consumers through the state health insurance marketplaces.

The committee was informed the three primary directives of the executive order:

1. Direct the Secretary of Labor to consider proposing regulation and revising guidance to expand Association Health Plans (AHPs);
2. Direct the Secretaries of HHS, Treasury, and Labor to consider proposing regulations or revising guidance to expand short-term limited duration insurance (STLDI); and
3. Direct the Secretaries of HHS, Treasury, and Labor to consider proposing regulations or revising guidance to expand Health Reimbursement Arrangements (HRAs).

The committee received testimony regarding the implementation timeline for the executive order which indicated:

- The executive order was signed October 12, 2017;
- Agencies have until April 10, 2018--180 days--to report on findings of rules and regulations that should or could be changed; and
- Any significant changes would not take effect until the 2019 plan year at the earliest.

The committee received testimony that on June 19, 2018, the Department of Labor issued its final rule on AHPs. The goal of this final rule is to make it easier for sole proprietors and small businesses to band together to buy health insurance without some of the regulatory requirements individual states and the ACA impose on smaller employers. This broader interpretation of the federal Employee Retirement Income Security Act of 1974 (ERISA) will allow employers that can pass a "commonality of interest" test to join together to offer health care coverage to their employees. Sole proprietors and small businesses will be able to access the small group health insurance market if they join an association that has at least 51 people, which is the number needed for an association to access the small group market. A sole proprietor also would be able to obtain coverage for their spouse and children through the qualified AHP. An Association Health Plan is a group health plan that employer groups and associations offer to provide health coverage for their members' employees, allowing small employers, through associations, to gain regulatory and economic advantages available to larger employers.

The committee received testimony that the possible benefits of AHPs may include more coverage options, affordable pricing, less regulatory burden and complexity, and reduced administrative costs. The benefits have been available to small employers previously but the final rule provides a new pathway for working owners without employees, including sole proprietors, to join together and access the small group market as well as for small businesses that meet the commonality of interest test to join together. The final rule does not affect previously existing AHPs, which were allowed under prior guidance, but which were subject to stricter geographic and commonality restrictions.

According to the testimony, the Insurance Department, through its regulation of multiple employer welfare arrangements (MEWAs), is one of a handful of state regulators that have adopted rules designed to regulate AHPs more effectively. The department's MEWA rules are designed to ensure the plans will be appropriately capitalized and grant the department continuing authority to examine the financial health of each plan. The department's rules also contain important protections for consumers who enroll in an AHP.

Important dates for AHP expansion under the final rule include:

- September 1, 2018, all associations, new or existing, may establish a fully insured AHP;
- January 1, 2019, existing associations that sponsored an AHP on or before the date the final rule was published may establish a self-funded AHP; and
- April 1, 2019, all other associations, new or existing, may establish a self-funded AHP.

The committee received testimony that on August 1, 2018, final rules were issued on STLDI, which became effective October 1, 2018. A short-term limited duration insurance is a type of coverage primarily designed to fill gaps in coverage which may occur when an individual is transitioning from one plan or coverage to another plan or coverage. This coverage is not subject to the provisions of the ACA. The final rules change the definition of STLDI to policies that are less than 12 months, provide policies may be renewed for up to 36 months, and contain certain disclosure provisions. This final rule does not trump state law. Although North Dakota law defines "insurer", "policy", and "short-term" and provides short-term policies are limited to no more than 185 days, state law is silent on renewal options.

According to the testimony, STLDI plans serve a narrow purpose. Generally, these plans, which are not comprehensive coverage and are simply to provide a stop-gap, are intended for people who are between jobs or have a short-term coverage gap. Until the final rules become effective, STLDI plans are limited to 90 days in duration.

The committee reviewed Bulletin 2018-2, issued by the Insurance Commissioner on September 19, 2018. This bulletin clarifies the final federal rules and the state law, rules, and policies relating to STLDIs.

The committee received testimony that in response to the October 12, 2017, presidential announcement, the administration no longer will be making CSR payments to insurance companies and several carriers and 19 states have filed lawsuits seeking to reinstate the payments.

The Insurance Commissioner's response to the termination of the CSR payments is addressed under "Federal Marketplace."

State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver to pursue strategies for providing its residents with access to high-quality affordable health insurance while retaining the basic protections of the ACA. State Innovation Waivers allow states to implement new ways to provide access to quality health care which are at least as comprehensive and affordable as would be provided absent the waiver, provide coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and do not increase the federal deficit.

The committee considered a letter dated September 8, 2017, from the Insurance Commissioner to Senator Lamar Alexander, Chairman, Senate Committee on Health, Education, Labor and Pensions, expressing the commissioner's concerns with the State Innovation Waiver. The letter identified the following three possible barriers to North Dakota pursuing a waiver:

1. North Dakota has a federally run exchange and because of this, our options under the current regulations are limited. Any changes made with a 1332 waiver would leave the state to cover the cost of implementation. In essence, we would have to take over the federally run exchange, at great expense to the North Dakota taxpayer. We simply do not have the state funds to undertake a change of that magnitude. Also, given the uncertainty of what a new health care law would look like, we believe given the status of our market, we should not be placing a further burden on our state funds to support a system that will ultimately change in the coming months or years.

2. The areas in which other states have chosen to write waivers would also require a massive amount of state dollars to accomplish if North Dakota were to follow. Further, subsidizing premiums or putting more money into reinsurance all require an influx of state dollars that North Dakota simply does not have. The cost of a waiver in similar states ranges between $100 million to $300 million and those dollars do not even include the cost of developing and implementing the waiver. North Dakota does not have the state funds to continue to support a failing system with partial waivers.
3. Any changes as a result of a 1332 waiver are not only cost prohibitive for North Dakota on the front end but would also carry grave concerns about the longer-term sustainability of any additional funds being placed into the ACA model. It is one thing to cover a one-time expense of $100 million but for that waiver to continue, it is our belief that it would become an annual expense that would only continue to grow, further depleting our state budget.

In this letter, the Insurance Commissioner additionally stated the State Innovation Waiver is focusing on the wrong targets as although the ACA was intended to have significant impacts, the main impact experienced in North Dakota is an unsustainable health insurance cost trajectory. The commissioner stated to address the cost of the ACA, states should be afforded the option of a true waiver and allowed to waive out of the provisions that have dramatically increased the cost of health insurance. The commissioner identified the following provisions as creating this unsustainable trajectory:

- Essential health benefits benchmarks;
- Three-to-one rate bands based on age;
- Guaranteed availability and issue requirements;
- Prohibitions on pre-existing condition exclusions; and
- Prohibitions on annual and lifetime limitations.

The Insurance Commissioner reported the Insurance Department contracted with an actuarial firm to conduct a multiphased approach to modeling and analyzing health insurance reform options for a Section 1332 State Innovation Waiver. The goal for the analysis is for the Insurance Department to understand how each option would affect the state's individual health insurance marketplace to allow the department to make a determination about which, if any, options to propose to the Legislative Assembly for the 2019 legislative session. The Insurance Commissioner testified he would not pursue a State Innovation Waiver without legislative directive.

In addition to analyzing Idaho's state-based plan initiative and how a similar state-based plan allowance could operate in North Dakota, the analysis conducted for the Insurance Department was based on the following three identified strategies:

1. Modification of the Comprehensive Health Association of North Dakota (CHAND) to allow a greater number of high-risk North Dakotans to obtain health insurance from CHAND, along with an analysis of the corresponding insurance company assessments necessary for CHAND to successfully operate with an increased high-risk membership.
2. Modification of CHAND into an invisible high-risk pool through which an insurance company would cede the high-risk members' claims to the pool in exchange for the premium. This approach would have no effect on the insureds because insureds' premiums would be unaffected and the insured still could select any plan they choose.
3. Creation of a reinsurance program independent of CHAND. A reinsurance program would limit the amount of risk insurance companies would assume for the high-risk North Dakotans they insure.

The Insurance Commissioner and the department's consultant presented a final report outlining the best two State Innovation Waiver options for North Dakota:

1. Creation of an invisible reinsurance pool; and
2. Creation of a state-based plan to be sold by insurance companies.

The analysis shows an invisible reinsurance pool has the ability to reduce individual health insurance premiums between an estimated 10 to 20 percent in 2020, compared to the baseline premium depending on the attachment point chosen. Due to the reduced premium, membership in the 2020 individual market is estimated to increase 1 percent compared to the baseline without the waiver.

The reinsurance mechanism would be what has been referred to as "invisible" reinsurance. The approach of invisible reinsurance allows enrollees to remain in the individual market with their current plan and carrier, but a portion of enrollees' claims are reimbursed by the reinsurance pool. The enrollee is not aware the enrollee's claim is being paid via

the reinsurance pool, meaning there is no effect on the enrollee since the task of ceding claims to the reinsurance pool is completed on the back end of the process and is without consequence to the enrollee.

For 2020, the proposed reinsurance program would cover 75 percent of paid claims between the attachment point and $1 million. The attachment points being considered are $100,000 and $200,000. This level of reinsurance was assumed in projections, but North Dakota could have the flexibility to change the parameters.

The intent of a state-specific plan similar to the plan proposed in Idaho is to have an affordable option for healthier individuals who have foregone purchasing health insurance and to inject healthier risk into the single risk pool. Healthier individuals would pay a reduced premium. This state plan would cover all essential health benefits, but would allow a higher cost-sharing compared to the ACA metallic level plans. The plans would be guaranteed issue, but in the event of a coverage lapse, carriers would be allowed to implement a waiting period consistent with the provisions of the ACA before pre-existing conditions would be covered.

The analysis shows the invisible reinsurance pool would reduce premiums and the state plan would provide a low-cost alternative to healthier individuals, resulting in more individuals with health insurance and a more stable individual market, thus protecting carriers from unpredictable high-cost claims. This also would result in carriers being more willing to participate in the North Dakota individual insurance market.

The reinsurance pool would be funded by a combination of federal funds and assessments. The federal funding would be in the form of advance premium tax credits, and assessments would be placed on insurance companies selling in the state's health insurance market.

In addition to the waiver, the lower premium charged to healthy individuals under the state plan would provide an alternative when rate increases result in individuals and families dropping coverage which could lead to a larger insured population and a more stable market.

The committee received testimony from health insurance carriers regarding the Insurance Department's report on Section 1332 State Innovation Waiver options. Carriers expressed interest in the funding mechanism that would be used to fund the state plan, including whether assessments would be charges for administration of self-insurance plans.

Comprehensive Health Association of North Dakota

The committee received an overview of the history of CHAND, the state's health insurance high-risk pool, which was enacted in 1981 and codified under Chapter 26.1-08. When created, pre-ACA, the purpose of CHAND was to provide comprehensive health insurance benefits to residents of the state who had been denied health insurance or had been given restricted coverage or excessive health premiums because of high-risk health problems and to cover major medical and prescription drug expenses, subject to benefit plan limitations and exclusions.

Under CHAND the individual member premiums fund approximately one-half to two-thirds of the cost of the program, not to exceed 135 percent of premiums charged in North Dakota for similar coverage. The balance of the cost of the program is covered by assessments to companies that write $100,000 or more of annual major medical and Medicare supplement premiums on behalf of residents of North Dakota. Comprehensive Health Association of North Dakota assessments may be taken as a credit against premium taxes due.

When compared to a traditional platinum ACA plan, CHAND plans offer similar cost-sharing benefits for in-network and out-of-network services. Generally, CHAND plans provide cost-sharing benefits at least equal to or better than cost-sharing provisions in bronze, silver, and gold ACA plans. In North Dakota, CHAND and traditional ACA plans have a similar provider network. Outside North Dakota, a traditional ACA plan network is quite broad but may be different from the network available through a CHAND plan. A Comprehensive Health Association of North Dakota plan includes a $1 million lifetime benefit limit and a 180-day waiting period for pre-existing conditions - traditional ACA plans do not include these provisions.

A representative of the Insurance Department reported it is a public policy decision whether to change or eliminate CHAND plan provisions. According to the Insurance Department, as the federal debate over the future of health care continues, CHAND remains a viable option for North Dakotans in need of health insurance. By having CHAND in place, North Dakota is well positioned to adapt to health insurance changes made at the federal level.

Federal Marketplace

The committee received status reports on annual enrollment through the federal marketplace for plan years 2018 and 2019. Due to federal changes, the length of the open enrollment period has been shortened from 90 days to 45 days and federal funding for enrollment assistance has been cut.

The committee received testimony from health insurance carriers participating in the ACA federal marketplace, including testimony on the impact of the October 12, 2017, executive statement eliminating CSR payments to carriers. For the 2018 plan year, the carriers absorbed the costs associated with lack of funding from the CSR program, but premium prices for the 2019 plan year will reflect this loss of CSR payments.

The testimony from the Insurance Commissioner indicated during rate filings for the 2018 plan year, the Insurance Department requested all companies be ready to go with a CSR rate and a non-CSR rate. On October 13, 2017, the department was in contact with the Centers for Medicare and Medicaid Services and requested non-CSR rates from the carriers in North Dakota. Upon review of those rates, the Insurance Commissioner decided not to allow any adjustments to the rates previously approved by the department and released on October 1, 2017.

The Insurance Commissioner testified uncertainty should be in the hands of the insurance carriers, not the consumers. The testimony noted for the short term, carriers are better suited to handle the federal uncertainty.

The committee received testimony regarding health benefit coverage of North Dakotans:

- Employer-sponsored - 55 percent of the state's residents participated in a group health insurance plan offered by an employer. This includes employees of large and small private companies; federal, state and local government employees; and active military.
- Public programs - 29 percent of the state's residents received health care benefits through Medicare and Medicaid.
- Individually purchased - 8 percent of the state's residents purchased health insurance on their own through the federal marketplace or an agent.
- Uninsured - 8 percent of the state's residents remained uninsured.

Litigation

The committee received testimony regarding North Dakota's participation in *Texas v. Azar*, a case filed in the United States District Court in the Northern District of Texas. In this case, a coalition of 20 states, including North Dakota, is suing the federal government claiming the ACA is no longer constitutional following the repeal of the requirement people have health insurance or pay a fine for lack of coverage.

The committee received testimony that although the United States Department of Justice will not defend much of the lawsuit, 17 states have filed as interveners to defend the lawsuit. This case likely is bound for the United States Supreme Court, but it likely will be years before a final decision is issued.

Considerations and Conclusions

The committee received testimony it is likely the Insurance Department will introduce legislation to pursue a Section 1332 State Innovation Waiver to move forward with creation of an invisible reinsurance pool and the creation of a state-based plan to be sold by insurance companies. The committee makes no recommendation regarding this study.

STATE EMPLOYEE HEALTH INSURANCE BENEFITS STUDY

Background

The committee studied the public employee health insurance plan, including the feasibility and desirability of transitioning to a self-insurance health plan. The study included a review of the current plan and consideration of the costs and benefits of the current plan compared to the costs and benefits of a self-insurance health plan.

Previous Legislative Studies

Although the topic of the Public Employees Retirement System (PERS) transitioning from a fully insured to a self-insurance health plan to provide health benefits coverage has not been studied by the Legislative Management in recent history, Legislative Management interim committees and the Employee Benefits Programs Committee have conducted studies relating to public employee health benefits coverage.

During the 2013-14 interim, the Government Finance Committee studied the state contribution to the cost of state employee health insurance premiums, including the feasibility and desirability of establishing a maximum state contribution for state employee health insurance premiums. The committee received information the state health insurance plan is exempt from certain provisions of the ACA as long as the plan's grandfathered status is continued. The plan's grandfathered status may be lost if certain existing plan benefits are not maintained or if an employee is required to pay more than 5 percent of a single or family premium rate.

The 2013-14 Government Finance Committee recommended and the Legislative Assembly approved House Concurrent Resolution No. 3003, which provided for 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 for state employee health insurance premiums and the effect of losing the state's grandfathered status under the ACA.

Although the 2015-16 Health Care Reform Review Committee considered a bill draft to remove the statutory requirement the state fund 100 percent of the cost of state employee health insurance premiums, the committee did not make any recommendations relating to the study.

The Employee Benefits Programs Committee is a statutory committee that receives status reports from PERS, including the activities of the PERS Board relating to the public employee health benefits coverage, and reviews bill drafts and bills that may affect public employee health benefits coverage.

During the 2013-14 interim, PERS reported to the Employee Benefits Programs Committee on the status of the PERS request for proposals for health benefits coverage for the 2015-17 biennium. This 2014 solicitation is the most recent request for proposal for public employee health benefits coverage. This solicitation included a request for a fully insured plan as well as for a self-insurance plan. The Public Employees Retirement System Board awarded Sanford Health Plan (SHP) a contract for a fully insured plan. This 2-year contract with SHP has the option of up to two 2-year renewals. The contract was renewed to provide coverage for the 2017-19 biennium. During the summer of 2018 the Employee Benefits Programs Committee received status reports from PERS on the PERS Board's review of SHP's performance under the contract, an analysis of proposed rate increases for the 2019-21 biennium, and possible contract renewal or solicitation of bids.

Plan History

Chapter 54-52.1 provides group medical insurance is available to an 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 at least 20 hours per week, and work at least 20 weeks each year. A temporary employee who works at least 20 hours per week and 20 weeks per year may purchase health insurance at that employee's expense or the employing agency may pay the premium.

The 1963 Legislative Assembly enacted Chapter 52-12, authorizing 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 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 PERS Board. The board was directed 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 (BCBSND) provided and administered the health insurance benefits plan for public employees. In 1983 the PERS Board was authorized by Section 54-52.1-04.2 to establish a self-insurance health plan for providing health benefits coverage under an administrative services-only contract or a third-party administrator contract if the board determined during any biennium 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.

Although the PERS Board began its administration of the self-insured health 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 was a negative $4,759,963 with estimated outstanding claims payable of $4,600,000.

In 1987 the PERS 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 1-year trial period, was discontinued.
3. Expansion of contract deductibles to include all inpatient, outpatient, and physician services.
4. Increase of 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 HMO 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, the HMO with 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 HMOs, resulted in a substantial number of public employees choosing the PERS health benefits plan during the 1988 open enrollment period.

In January 1989 the PERS Board voted to end the self-insurance health plan and buy the coverage from BCBSND. 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 the 1989-91 biennium. The Blue Cross Blue Shield of North Dakota bid of approximately $35 million to fund state employees' health insurance for the 1989-91 biennium included provisions the company would absorb approximately $5 million in unpaid claims when the company took over in July 1989.

Until 1993 the health insurance program charged premiums based on each employee's election of a single or family plan. Beginning with the 1993-95 biennium, the PERS 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 following schedule reflects the monthly 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%
2015-17					$1,130.22	15.1%
2017-19					$1,265.34	9.8%

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

and employees choosing a family plan paid any additional cost. Since 1979 the state has paid the full cost of a single or family plan for eligible state employees.

Fully Insured Health Plan Option

The Public Employees Retirement System Board has contracted to provide health benefits coverage through a fully insured plan from July 1989 to the present. Before July 1989, the coverage was provided through a self-insurance health plan; however, the plan exhausted its funding during the 1987-89 biennium resulting in the change to the fully insured plan. The board contracted with BCBSND from July 1989 through June 2015 and with SHP from July 2015 to the present.

Although the PERS health benefits coverage technically is provided through a fully insured plan, it is actually provided though a modified fully insured plan. Because of the large size of the group, PERS historically has been able to negotiate a gain-sharing and loss corridor provision - 50/50 in the first $6 million of loss and the remainder of the loss to the carrier and 50/50 in the first $3 million of gain and the remainder to PERS. With the most recent contract renewal for coverage during the 2017-19 biennium, PERS shares in any gain, but does not share in any loss.

Self-Insurance Health Plan Option

Section 54-52.1-04.2 provides if the PERS Board determines a self-insurance plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits, the board may establish a self-insurance health plan for providing health benefits coverage. This analysis likely would take place at the time the board reviews bids received as part of the rebidding of the contract. If the board finds self-insurance is less than the lowest bid, the board is not required to establish a self-insurance health plan, because the law is permissive.

If the PERS Board establishes a self-insurance health plan, the plan must be offered through an administrative services only plan or a third-party administrator plan, and the plan may be for all of the health benefits coverages, with or without prescription drug coverage, or may be limited to prescription drug coverage.

If the PERS Board establishes a self-insurance health plan:

- The bid period must close by January 1 of an odd-numbered year, and the award must be made by March 1 of that year.
- The board is required to solicit a bid once every other biennium; however, the board may renegotiate an existing plan during the interim.
- Individual stop-loss coverage must be made a part of the plan.

Under Section 54-52.1-04.3, if the PERS Board establishes a self-insurance health plan, the board also is required to establish a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the plan. The board is required to establish a balance amount necessary for claims paid, between 1.5 and 3 months of claims paid. In addition, the board is required to establish an additional balance amount necessary for claims incurred, but not yet reported, between 1 and 1.5 months. Upon the initial changeover from a contract for insurance to a self-insurance health plan, the board is required to have in place a plan reasonably calculated to meet the funding requirements within 60 months.

If the PERS Board establishes a self-insurance health plan, political subdivisions participating in the state's uniform group health benefits coverage under Section 54-52.1-03.1 also would transition to participate in the self-insurance health plan. In practice, the move from a traditional insurance carrier to self-insurance would have very little impact on the political subdivision participants, as the participants would continue to pay a monthly premium regardless of whether self-insured. A political subdivision may withdraw from participation in the PERS health benefits coverage at any time; however, if at the time of withdrawal, the political subdivision has not completed 60 months of participation in the PERS plan, the political subdivision may be subject to additional costs for early withdrawal.

High-Deductible Plan

Section 54-52.1-18, as enacted by the 2011 Legislative Assembly, directs the PERS Board to develop and implement a high-deductible health plan with a savings account as an alternative to the regular health insurance plan. The difference between the cost of the high-deductible health plan premium and the regular health plan premium for single and family health plans is 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.

Calculation of Health Insurance Premiums

During the spring and summer of even-numbered years, PERS begins the process to renew the existing contract or obtain bids for state employee health insurance policies for the following biennium. The cost of renewal normally is returned in August, reviewed by the PERS Board, and if accepted the data is submitted to the Office of Management and Budget for inclusion in the executive budget. Renewals 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 also may have reserves that can be used to buy down the cost of premiums. If a contract is not renewed, a request for proposal is issued.

Affordable Care Act

The state health plan is exempt from certain provisions of the ACA as long as the plan's grandfathered status is continued. The plan's 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 plan also may lose its grandfathered status.

Testimony and Committee Considerations

Over the course of the interim, the committee received testimony from stakeholders, including representatives of PERS, health insurance carriers, and the Insurance Department. The committee received multiple status reports on the activities of the PERS Board, including the board's consideration of whether to renew for the 2019-21 biennium its contract with the current health insurance carrier.

The committee reviewed the history of PERS health benefits, including a plan overview reviewing membership, premium history, reserve history and use of reserve funds for premium buydown since 1997, current and past plan designs and the impact of agency budgets on plan design, plan participation, the contract renewal and bid process, and recent legislation relating to PERS health benefits.

Health Benefits Contract Renewal

The committee received updates on the PERS Board's consideration of whether to renew the health benefits contract for an additional 2 years. In accordance with section 54-52.1-05, in August and September 2018, the committee completed the following review:

- August 23, 2018 - The carrier initially proposed a 14.5 percent increase for the PERS health benefits contract renewal.
- September 11, 2018 - The PERS Board considered the carrier's proposal, and at the board's direction, PERS engaged the carrier in negotiations regarding the proposed increase.
- September 20, 2018 - The carrier reduced its proposed increase for the PERS plan to 13.5 percent and the board requested further negotiations.
- September 25, 2018 - The carrier's final proposal was a 13.1 percent increase. The carrier also agreed to implement several additional programs, if the board requests, designed to bring down the trend. The board's consultant projected a 13.3 percent increase for the health benefits contract renewal. The board unanimously voted to approve renewal of the contract indicating:

  The carrier's performance generally was ahead of where it was 2 years ago and meeting the board's expectations;

  The carrier's proposed premium renewal amounts were consistent with the board's expectations; and

  Additional relevant considerations weighed in favor of renewing.

The committee received the following fiscal information regarding the renewal rates:

		2017-19 Premiums	2019-21 Premiums	% Increase
What we **pay** Sanford each month (**premium** increase)	State with Wellness	$1,265.34	$1,431.10	13.1%
		Difference is buydown of ($27.32) and PERS Retention of $2.80	No buydown and PERS Retention of $2.80	
What we **bill** employers each month (**budget** increase)		**2017-19 Billed Rate (with buydown)**	**2019-21 Billed Rate (without buydown)**	**% Increase**
	State with Wellness	$1,240.82	$1,433.90	15.56%

Active State Renewal Rate - Employer Cost (Preliminary Numbers Only)	
	13.1 Percent Increase
2017-19 state rate (with buydown)*	$1,240.82
Projected 2019-21 rate (no buydown)	$1,433.90
2019-21 dollar increase	$193.08
2019-21 percentage increase	15.56 percent
Total state additional funds**	$73.4 million
Total additional general funds***	$40.4 million
Total current premium (2017-19)	$471.9 million
Total projected premium (2019-21)	$545.4 million

*Projected buydown for 2017-19 biennium (state, nonstate, and retirees) is $13.3 million
**For biennium assuming 15,847 state budgeted FTEs
***Assumed to be 55 percent of total funds

Medicare Part D Renewal

The committee received updates on the PERS Board's consideration of whether to renew the Medicare Part D contract. Although the PERS Board considered unbundling the Medicare Part D benefits from the medical supplement policy and, therefore, not renewing the contract, the board decided to renew the contract and additionally consider whether to unbundle the benefits in the future.

The committee received testimony the Medicare Part D renewal rates for 2019 were reduced 9.6 percent, from a monthly rate of $95.38 to $86.26. This rate includes addition of an opioid management program for an additional cost of 26 cents per policy per month.

Medicare Part D Options

Although the PERS Board renewed the Medicare Part D plan for 2019, the board continues to review options for providing this benefit. The committee received an overview of the history and current status of the PERS Medicare Part D benefit.

Historically, before Medicare Part D was created by the federal government, PERS offered a Medicare supplement that included drug coverage. When Part D was enacted, the carrier developed a product for PERS which captured the Part D subsidy, retained the existing plan of benefits for drug coverage, and did not have a doughnut hole.

Currently, PERS provides Medicare Part D coverage as part of a bundled product, which means it includes medical and drug coverage. In electing this coverage through PERS, a member is required to take both the drug and the medical coverage. However, the federal government provides Medicare retirees with an annual open enrollment giving retirees the opportunity to select drug coverage from numerous products in the marketplace with varying plan designs, formularies, and pricing. This open enrollment has resulted in confusion because PERS members receive information on the federal open enrollment, believe this is something available to members, and enroll for other Part D coverage. Because PERS members may not be enrolled in two Part D products, the federal government cancels the PERS member's Part D coverage with PERS. The unintended outcome is the member's eligibility for continued medical coverage is jeopardized because PERS cannot cancel drug coverage without also cancelling the medical coverage because the product is bundled.

In determining whether to retain the bundled benefit structure, the PERS Board Retiree Subcommittee reviewed the following two options and related considerations:

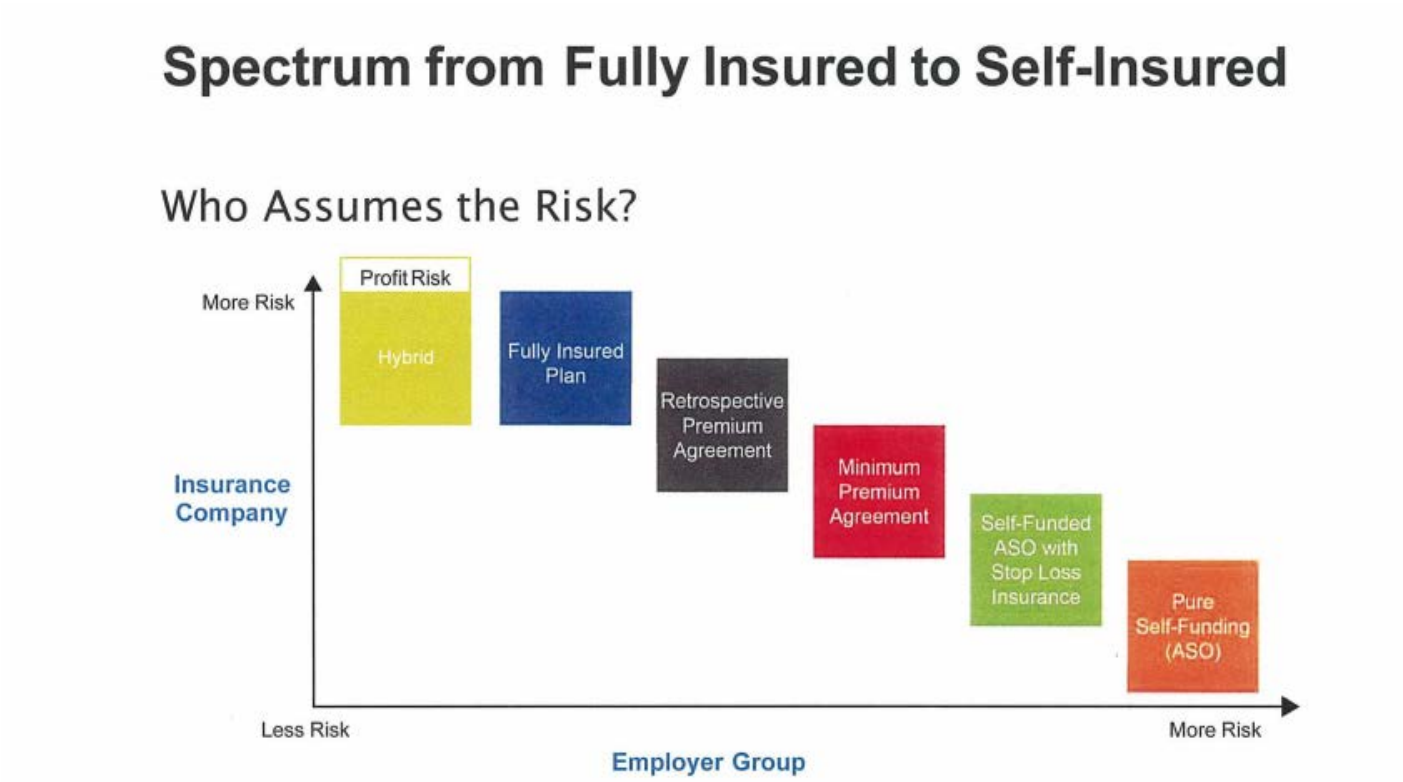
1. Option 1 - Remain bundled.
    - Maintaining status quo would not increase or decrease adverse selection to the plan;
    - May be less confusing for the member;
    - Stability of the group historically has resulted in stable premiums;
    - For some members, the PERS premium may be higher than unbundled options; and
    - May need to make plan design changes in the future to offset premium increase.
2. Option 2 - Unbundle.
    - Members would have the ability to stay in the PERS supplement plan but select a different drug plan;
    - Members would have more choice on type of plan;

- The different drug plan may have advantages over the PERS Part D plan;
- Similar plans or alternative plans with different cost-sharing amounts may be less expensive than the PERS Part D plan;
- The PERS Part D rates may increase in the long term, possibly resulting in adverse selection further causing the premium to increase;
- The current carrier appears to be willing to offer the plans unbundled;
- No adverse effect on premiums in the near term;
- The PERS Part D plan would no longer be unique in the marketplace;
- Does not require statutory change if eligibility is not changed; and
- Unbundling could be accomplished by continuing to offer both the supplement and the Part D plans, phasing out of offering a PERS Part D plan but offer other Part D plans from other carriers, phasing out offering a PERS Part D plan, or offsetting premium by making the Part D plan design more competitive.

The committee received testimony that additional options regarding Medicare Part D benefits include discontinuing the benefit to reduce the agency's budget in accordance with the Governor's budget guidelines, which call for a reduction of the agency's budget by 10 percent and a reduction of the agency's full-time equivalent positions by 5 percent.

Health Benefit Products

The committee received testimony from carriers regarding the types of health benefits products available for groups and the risk associated with these different types of products. The testimony included the pros and cons of the different health benefits products.



Survey of Neighboring States

At the request of the committee, PERS surveyed surrounding states - Idaho, Iowa, Minnesota, Montana, South Dakota, Wisconsin, and Wyoming - to determine how those states provide health benefits for public employees. The survey found:

1. Grandfathered status:

   One state grandfathered; and

   Six states nongrandfathered.

2. Employer types:

   Four states limit coverage to state employers;

   Two states cover state and political subdivision employers; and

   One state has separate plans for state and political subdivision employers.

3. Regulation of plans varies from Department of Insurance, executive branch, legislature, and plan administrator.

   Member complaints:

      Fully insured file with carrier; and

      Self-insured handled internally.

   Plan documents:

      Fully insured approved by Department of Insurance; and

      Self-insured not approved by Department of Insurance.

4. Funding arrangements:

   Four states are self-insured;

   One state has a fully insured hybrid;

   One state has both fully insured and self-insured plans; and

   One state has a retrospective premium agreement.

5. Plan design varies by administrative agency, executive branch, and legislative branch.

6. Number of plans offered:

   Two states offer a single plan; and

   Five states offer multiple plans (2-5).

7. Number of carriers:

   Five states use a single carrier; and

   Two states have multiple carriers.

8. Premiums generally are developed 6 to 9 months in advance for upcoming year.

9. Rates are set annually.

10. Length of contract:

    Four states have 5-year contracts with 1-year renewals;

    Two states have 3-year contracts with 1-year renewals; and

    The contracts generally go out to bid at the end of the contract.

11. Stop loss for self-insured plans. Only one state carries stop loss, which is aggregate only, per statute.

12. Reserve for self-insured plans.

    Reserve levels vary based on a percentage of claims, percentage of risk-based capital, and number of months.

    Types of reserves vary from general reserves, incurred but not reported, and incurred but not paid.

County Health Benefits

The committee received testimony from counties regarding county provision of health benefits for county employees. A representative of the North Dakota Association of Counties provided the results of its 2017 survey of counties relating to county health plans. The survey indicated 38 counties are enrolled in the PERS health plan, 5 counties self-insure with BCBSND as administrator, and 10 counties purchase a health plan directly from BCBSND.

The survey results indicated little change provided over the past 10 years, with two counties switching from PERS to BCBSND. On average, counties contribute 82 percent of the cost of a family policy premium, with 15 counties paying 100 percent. All but 5 counties pay 100 percent of a single policy premium.

The following tables provide data regarding survey results of counties that do not participate in the PERS health plan:

	Self-Insured Counties - Blue Cross Blue Shield of North Dakota Administered										
			Current Monthly Premium Amounts				Annual Percentage Increase in Premiums				
	Eligible Employees	Enrolled Employees	Single Adult Coverage	Single Adult + Dependents	Family Coverage	Employer Share of Family	Most Recent	1 Year Prior	2 Years Prior	3 Years Prior	4 Years Prior
Cass	425	403	$624	$1,098	$1,621	79%	1%	2%	7%	10%	0%
McKenzie	205	200	$672	$1,183	$1,748	85%	0%	0%	6%	4%	6%
Mercer	78	67	$448	$789	$1,166	90%	20%	5%	0%	0%	0%
Ramsey	65	65	$248	$436	$644	100%	14%	12%	19%	7%	3%
Williams	254	239				100%	0%	2%	5%	4%	7%
Total	1,027	974			Average	91%	7%	4%	7%	5%	3%

	Blue Cross Blue Shield of North Dakota Contract Counties										
			Current Monthly Premium Amounts				Annual Percentage Increase in Premiums				
	Eligible Employees	Enrolled Employees	Single Adult Coverage	Single Adult + Dependents	Family Coverage	Employer Share of Family	Most Recent	1 Year Prior	2 Years Prior	3 Years Prior	4 Years Prior
Adams	33	31	$654	$1,149	$1,699	50%	16%	(4%)	15%	0%	11%
Divide	48	45	$657	$1,157	$1,709	100%	23%				
Golden Valley	23	18	$626	$1,102	$1,628	75%	2%	1%	0%	17%	9%
Grand Forks	298	256	$557	$981	$1,449	82%	(19%)	14%	8%	2%	0%
Hettinger			$641	$1,130	$1,669	90%	4%	5%	4%	8%	
Renville	30	30	$618	$1,086	$1,604	38%	2%	1%	2%	23%	1%
Sioux						52%					
Slope	16	15	$727	$1,277	$1,888	100%	6%	4%	7%	12%	1%
Walsh	80	73	$566	$995	$1,470	75%	25%	17%	0%	11%	2%
Wells	47	46	$632	$1,136	$1,642	92%	17%	6%	16%		
Total	575	514			Average	75%	7%	7%	5%	12%	3%

Self-Insurance - Overview

The committee reviewed Chapter 54-52.1, the law relating to PERS uniform group insurance, including the option for PERS to provide health benefits through a self-insurance health plan. As part of this review a representative of PERS identified portions of Chapter 54-52.1 which could be updated.

The testimony from representatives of BCBSND and SHP provided detailed overviews of the carriers' experiences with self-insurance. According to the testimony, when an employer changes from a fully insured to a self-insured health plan, the employees notice very little change, because the change primarily is a financial arrangement regarding payment of claims. The carriers did not identify any significant concerns with the PERS self-insurance health plan statutes.

The committee received testimony regarding the statutory requirement for PERS and the common practices relating to the purchase of stop-loss coverage for a self-insurance health plan. It is not uncommon for a group to purchase specific stop loss for very large claims and aggregate coverage for all claims below the specific stop-loss deductible.

The testimony indicated when determining if the self-insurance health plan is less costly than a fully insured plan, PERS would look at both the expected cost of the self-insurance health plan and the maximum costs. It was noted a group can pay a premium for specific stop-loss coverage for the deductible selected, but aggregate coverage only applies if the total claims below the specific target are greater than some multiplier of the expected costs. For a group the size of PERS, the factor would be in the 10 to 15 percent range. Thus, there are two "costs" that could be compared:

1. Expected cost = specific stop-loss premium + aggregate stop-loss premium + administration fees + 100 percent of aggregate claims; and
2. Maximum cost = specific stop loss premium + aggregate stop-loss premium + administration fees + 110 to 115 percent of aggregate claims.

The committee received testimony from representatives of the Insurance Department regarding regulation of a PERS self-insurance health plan. As a government plan, a PERS self-insurance health plan would be exempt from ERISA, and if the PERS plan continues to have state and political subdivision participants it may be subject to the Insurance Department's MEWA rules. If the PERS plan is limited to state participants, it is unclear how the plan would be regulated.

The committee worked with PERS and the Insurance Department to prepare a bill draft that provides a PERS self-insurance health plan would be subject to the regulation of the Insurance Department and establishes the parameters of that regulation; revises the law establishing the requirements of a PERS self-insurance health plan to provide individual stop loss is optional, to increase the minimum amount of the required contingency reserve funds for a PERS self-insurance health plan, and to remove the 5-year timeline within which PERS would be required to meet the funding requirements if PERS transitions to a self-insurance health plan; and grants the Insurance Commissioner emergency rulemaking authority to adopt rules to regulate PERS self-insurance health plans.

The committee worked with PERS to prepare a bill draft that updates the law relating to PERS uniform group insurance for health benefits coverage, clarifying PERS may receive bids for all or part of prescription drug coverage, providing PERS may establish a self-insurance health plan if doing so best serves the interests of the state and the state's eligible employees, and providing the interests of the state and the state's employees is a factor for PERS to take into consideration when determining whether to renew a health benefits contract.

Recommendation

The committee recommends House Bill No. 1028 which combines the two bill drafts the committee considered. The bill:

- Provides PERS self-insurance health plans are subject to the regulation of the Insurance Department;
- Establishes the parameters of the regulation of PERS self-insurance health plans;
- Allows PERS to establish a self-insurance health plan if doing so best serves the interests of the state and the state's eligible employees;
- Revises the requirements of a PERS self-insurance health plan to provide stop-loss coverage is allowed but not required, the minimum amount of the reserve fund is no longer codified, and the plan must provide coverage for all the same health benefit mandates as required under a fully insured plan;
- Authorizes the Bank of North Dakota to extend PERS a line of credit to help administer a self-insurance health plan;
- Provides PERS may not renew a health benefits contract unless doing so best serves the interests of the state and the state's employees;
- Clarifies PERS may receive bids for all or part of prescription drug coverage; and
- Declares the act is an emergency measure.

PUBLIC BENEFITS MANAGED CARE STUDY

Background

Previous Legislative Studies

Although the topic of managed care for public benefit programs has not been the subject of an interim study in recent history, for the previous three interims the Legislative Management's interim Health Care Reform Review Committee has conducted ongoing studies of the state's health care delivery system with an eye to providing North Dakotans affordable health care. In the course of the Health Care Reform Review Committee's studies, the committee received information regarding the state's medical assistance program, Medicaid Expansion program, and CHIP, as well as regarding the provision of medical services through a medical home model.

During the 2015-16 interim, the Health Care Reform Review Committee considered several alternative recommendations with the goal of decreasing the state's financial liability for the Medicaid Expansion program to alleviate the financial impact of removing the July 31, 2017, sunset. House Bill No. 1032 (2017) was one such alternative recommendation made by the committee which would have removed the sunset, provided Medicaid Expansion provider reimbursement rates are the same as under the traditional Medicaid program, and removed the requirement the Medicaid Expansion program be provided through a private carrier or by utilizing the health insurance exchange. In effect, this bill would have moved the Medicaid Expansion from a managed care program to a fee-for-service program. This bill failed in the House and instead, under Section 38 of House Bill No. 1012 (2017), the Legislative Assembly extended the sunset to July 31, 2019, without amending the law regarding private carriers and without statutorily setting provider reimbursement rates.

North Dakota

Under Chapter 50-24.1, DHS administers the state's Medicaid program, known as medical assistance; under Section 50-24.1-37, DHS administers the Medicaid Expansion program, which is scheduled to sunset July 31, 2019; and under Chapter 50-29, DHS administers CHIP, known as Healthy Steps. These programs are federal-state partnerships and subject to changes in federal law. While the state is able to design program services, eligibility, and operational protocols,

the federal government contributes funding, dictates the minimum standards, and sets requirements for various program operations. Each of these programs provides health care coverage to qualified applicants and each program has its own set of qualification requirements.

Within these public benefit programs, eligible recipients fall into multiple classifications, and based on these classifications, the type of managed care that may be appropriate or allowed by the federal government may vary. For example, within Medicaid, the following applicants may be eligible:

- Low-income individuals from birth;
- Children in foster care or subsidized adoption;
- Former foster care children;
- Children with disabilities;
- Pregnant women;
- Women with breast or cervical cancer;
- Workers with disabilities;
- Other blind or disabled individuals; and
- Low-income Medicare beneficiaries.

In addition to the various eligibility classifications for these programs, within the programs, DHS is operating under multiple federal waivers. A state change in any of these programs may require federal approval.

There appears to be federal and state support for implementing managed care within the programs. The Center for Medicaid and CHIP Services is one of six centers within the Centers for Medicare and Medicaid Services, which is an agency of the HHS. The Center for Medicaid and CHIP Services reports:

- Managed care is a health care delivery system organized to manage cost, utilization, and quality. Medicaid managed care provides for the delivery of Medicaid health benefits and additional services through contracted arrangements between state Medicaid agencies and managed care organizations (MCOs) that accept a set per member per month (capitation) payment for these services.
- By contracting with various types of MCOs to deliver Medicaid program health care services to their beneficiaries, states can reduce Medicaid program costs and better manage utilization of health services. Improvement in health plan performance, health care quality, and outcomes are key objectives of Medicaid managed care.
- Some states are implementing a range of initiatives to coordinate and integrate care beyond traditional managed care. These initiatives are focused on improving care for populations with chronic and complex conditions, aligning payment incentives with performance goals, and building in accountability for high-quality care.

The Center for Medicaid and CHIP Services publishes managed care profiles for each state. North Dakota's profile and DHS's website indicate DHS utilizes the following four managed care programs for its public benefit programs:

1. Primary Care Case Management program;
2. Health Management program;
3. Program of All-Inclusive Care for the Elderly (PACE); and
4. Medicaid Expansion through an MCO.

Medicaid and Children's Health Insurance Program Managed Care Final Rule

Recent federal developments may affect the state's ability to implement managed care or require the state to implement additional managed care provisions. On April 25, 2016, Centers for Medicare and Medicaid Services put on display the Medicaid and CHIP Managed Care Final Rule. The reported key goals of the final rule are to:

- Support state efforts to advance delivery system reform and improve the quality of care;
- Strengthen the beneficiary experience of care and key beneficiary protections;
- Strengthen program integrity by improving accountability and transparency; and
- Align key Medicaid and CHIP managed care requirements with other health coverage programs.

The effective date of the final rule was July 5, 2016, with phased implementation of new provisions primarily taking place over 3 years, starting with contracts entered after June 30, 2017. State CHIP and Medicaid programs will be required to comply with this final rule.

Testimony and Committee Considerations

Managed Care Overview

The committee received testimony from representatives of Leavitt Partners providing an overview of managed care options for public benefit programs, including the evolution of managed care, managed care efforts being taken in other states, and how managed care philosophy may impact the choices a state makes.

The committee considered whether federal block grants may be a factor in considering managed care. Block grants mean different things to different entities. For states, block grants mean increased flexibility; whereas, for the federal government, block grants are a way to limit financial liability. The competing forces are that the federal government wants to provide the minimum amount of funding and the states want to receive the maximum amount of funding.

According to the testimony, there is not one ideal model of managed care which is the right model for a state. The model chosen should be related to the goals and objectives of implementing managed care. Considerations in evaluating whether to implement a new managed care model and to consider during implementation may include:

- The public benefit programs' populations, including:
  - The needs of the populations;
  - The utilization patterns of the populations; and
  - Provider readiness for change.
- The managed care model chosen needs to reflect the goals, not the inverse.
- Participation by stakeholders, including providers and recipients, and some resistance from stakeholders should be expected.
- There are benefits to reviewing models other states have implemented and the processes used to evaluate model selection and implementation.
- It may be desirable to phase-in new managed care models, based on factors such as population groups or geography.
- The appropriate role of the state agency.
- During implementation, have a strong contracting process, including a clear contract with clear expectations.
- During and following implementation, continue to monitor and refine because continuously refining will be necessary to meet the state's objectives.

The committee received testimony providing a national overview of managed care in the Medicaid market. The trend is for MCOs to provide managed care through a risk-based, per member, per month capitated payment. The managed care organization relationships are selected through a procurement process. Thirty-eight states, the District of Columbia, and Puerto Rico have Medicaid MCOs. Seventy percent of all Medicaid beneficiaries--52 million enrollees--are enrolled in MCOs. There are 336 Medicaid health plans in the United States. Populations frequently served by Medicaid MCOs include traditional Medicaid, CHIP children, pregnant women, the aged, blind, and disabled population, foster children, long-term care residents, and the dual eligible population.

The committee received testimony providing an overview of how Indiana implemented managed care for its Medicaid population. Indiana phased in population groups beginning in 1994 and in 2015 included foster children and the aged, blind, and disabled populations. Indiana's Medicaid managed care program saved that state between $406 million to $811 million from 1994-2015.

Department of Human Services

The committee received testimony from representatives of DHS regarding the following DHS managed care initiatives: Primary Care Case Management (PCCM); PACE; and MCOs for CHIP and Medicaid Expansion.

Considerations and possible steps to take if Medicaid managed care is expanded include preparation of a request for proposal, consideration of statutory changes, pursuit of federal waivers for state plan changes to CHIP and Medicaid, review of Medicaid management information system (MMIS) functionality, and allowing time for procurement protests.

According to the testimony, the MMIS may be impacted if additional managed care programs are implemented. The Medicaid managed care and Health Enterprise MMIS renewal and extension options expire in October 2020. The Department of Human Services indicated it will need to procure services appropriately based on the status of the addition

of managed care programs as well as submit the appropriate changes request for the current contract. It was noted a change request requires time and money. Any timeline for implementation of additional managed care programs should factor in these requirements.

The committee received testimony from representatives of DHS regarding the relationship of managed care to Medicaid and department operations. Over the last 5 bienniums, developmental disability, medical, and long-term care have driven growth in spending. While the percentage of the state's population on Medicaid is low at 13 percent, our spending of $10,000 per enrollee is the highest in the country.

The Department of Human Services has several ongoing and strategic initiatives to address costs and additional priorities. The department's strategies and actions include:

- In the delivery of human services, multiple components must be delivered to optimize return on investment.

  If one component is optimized, it may not be as impactful if other components are not optimized in parallel or correspondingly.

  The state has been successful in keeping Medicaid enrollment low through multiple community resources and policy; however, the cost per beneficiary is significantly higher than national averages.
- For system stability, incrementally move from cost, to service, to outcome-based reimbursement across all payment systems.
- Move toward administrative simplification, reduction of complexity, stability for state Medicaid. Medicaid stability relies heavily on information technology tools and resources.
- Increase focus on client and needs through functional support and enhance supports for behavioral health and service in the least restrictive environment.

  There is inconsistency across waivers that do not align services to needs.

  Behavioral health coverage is inadequate, particularly around targeted case management.

  Some elderly are having difficulty staying home.

  Optimize coverage to better align services to needs for children, disabled, and elderly.

Providers

The committee received testimony from representatives of rural hospitals and federally qualified health centers regarding collaboration taking place in bringing health care to rural North Dakota. Barriers these stakeholders are facing include regulatory and reimbursement silos and economic factors such as workforce shortages.

The committee received testimony from a representative of the North Dakota Long Term Care Association in opposition to implementing managed care for the Medicaid long-term care population. The testimony noted the best approach is to learn from other states with managed care experience and to continue on our path of incremental improvements.

The committee received testimony providing an overview of PACE, which provides a full range of preventive, primary, acute, and long-term care services that enable seniors to live in their own homes as long as possible.

The committee received testimony from a representative of the North Dakota Association of Community Providers which provided a summary of the recently completed 9-year process to develop a new developmental disabilities payment system. The testimony supported the gathering of data on how this new system works and how to move forward after this data has been analyzed to gauge the success or failure of this new payment system.

Throughout the interim, the committee received status reports on the activities of the North Dakotans for the Advancement of Care Medicaid Working Group regarding the status of its activities. This group of tertiary hospitals in the state worked with critical access hospitals to move forward on a managed care initiative proposal.

The working group's initial recommendations are:

Initial Program Recommendations	
Model vision	• Population-based alternative payment model in which one or more affordable care organizations (ACOs) contract with the state to take responsibility for delivering cost-effective care to a defined panel of Medicaid enrollees
Covered population	• All traditional and expansion Medicaid enrollees, excluding the developmentally disabled population (Approximately 80,000 mandatory enrollees)

Initial Program Recommendations	
Services included	• Required: physical health, behavioral health, long-term services and support, Rx services; Optional: oral health (to be phased in over time), non-emergency transportation
	• Long-term services and support and Rx services included in total cost of care calculations beginning PY3; non-emergency transportation not included in total cost of care calculations
Provider configuration	• Program to include multiple ACOs, comprising all of the state's eligible providers who will work collaboratively toward shared goals
	• Participation will be mandatory for all eligible Medicaid providers, though approaches to participation may vary
Governance model	• State → Convener → ACOs
Geographic coverage	• Initially piloted in select region(s), then expanded statewide after initial phase-in period
Financial risk	• ACOs will eventually share downside risk for actual expenditures exceeding a predetermined target, with increasing levels of risk/reward over time.

Pharmacy

The committee received testimony regarding Medicaid and Medicaid Expansion pharmacy benefits and steps the state could take to help control costs. As part of this presentation the committee also considered whether some of these steps also may be applicable to PERS prescription drug benefits for the PERS health plan and the Medicare Part D benefits. Recommendations relating to this testimony included:

- For PERS drug benefits and Medicaid Expansion, either revise the contract to establish drug pricing terms and guarantees or carve out coverage so drugs are not moved between the medical and the pharmacy sides.
- Conduct a quick, independent analysis of Medicaid drug-by-drug costs and rebates with Medicaid Expansion. If Medicaid Expansion drug costs are far more expensive than traditional Medicaid, North Dakota should consider bringing its Medicaid Expansion program in house to decrease its Medicaid Expansion drug costs.
- Authorize Medicaid to exclude more drugs and pursue more steerage programs to provide less-costly and wiser drug coverage.
- Authorize Medicaid to pursue and expand its site-of-care steerage programs.
- Implement a loophole-free and exclusivity-free pharmacy benefits management (PBM) contract for PERS prescription drug benefits.

The committee received testimony from representatives of the North Dakota Pharmacists Association in opposition to including prescription drug benefits in any Medicaid managed care programs. The testimony noted DHS has had success in controlling its drug spending.

The committee received testimony from representatives of PBMs regarding the role of PBMs in the health care system, including state and federal regulation of PBMs and an overview of clinical PBM tools and the value of PBMs.

The committee received testimony and data regarding the pharmacy services for traditional Medicaid and Medicaid Expansion, including the most expensive classes of drugs, the net spend for traditional Medicaid, traditional Medicaid rebates, narcotic trends, and fraud cases.

Managed Care Organizations

The committee received extensive testimony from MCOs regarding opportunities for managed care in the state. The Department of Human Services assisted the committee in drafting an informal request for information regarding how Medicaid managed care could be implemented in the state. The request for information addressed--whether a North Dakota managed care program should be tailored, enrollment, benefits, provider contracting, access, and social determinants of health.

Six MCOs participated in panel discussions and were given the opportunity to submit written responses and verbal responses to detailed questions. Representatives of DHS were invited to join the committee members to participate in the panel discussions and ask questions.

Indian Country

The committee received testimony providing an overview of the federal policy change that allows for 100 percent federal reimbursement for Medicaid services provided through Indian Health Services or Public Law 93-638, known as tribal 638 health facilities, if there are care coordination agreements in place between the tribal providers and nontribal providers. Participation in this program is voluntary.

House Bill No. 1012 (2017) provided legislative intent for DHS to help facilitate care coordination agreements and provided any increased federal Medicaid reimbursements resulting from these agreements be deposited in a separate account of the health care trust fund. Participating tribes do not receive any of these funds.

The committee received testimony from representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, the Spirit Lake Tribe, the Standing Rock Sioux Tribe, and the Turtle Mountain Band of Chippewa Indians regarding each tribe's experiences of providing health services in Indian country through a managed care model and regarding the status of care coordination agreements for the provision of Medicaid in Indian country.

The delivery of health services in Indian country varies from reservation to reservation based in part on whether health services are delivered by Indian Health Services or are delivered by tribal 638 health facilities. Testimony focused on tribal willingness to participate in Medicaid care coordination agreements to increase federal reimbursement for services. However, the tribal representatives testified the care coordination agreements require additional resources. The tribal representatives requested the state share increased federal Medicaid reimbursement with the tribes to help fund unmet health needs in Indian country.

Recommendations

The committee makes no recommendation regarding the public benefits managed care study.

HEALTH SERVICES COMMITTEE

The Health Services Committee was assigned the following responsibilities:

- Study state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs pursuant to Section 33 of House Bill No. 1012 (2017).
- Study the state's early intervention system for children from birth to age 3 with developmental disabilities pursuant to Section 2 of Senate Bill No. 2325 (2017).
- Receive a report on 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 pursuant to of North Dakota Century Code (NDCC) Section 18-13-02(6).
- Receive a report from the Department of Human Services (DHS), State Department of Health, Indian Affairs Commission, and Public Employees Retirement System (PERS) 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 pursuant to NDCC Section 23-01-40.
- Receive a report by the State Department of Health regarding progress made toward the recommendations relating to the quality of care for individuals with stroke pursuant to NDCC Section 23-43-04.
- 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 pursuant to NDCC Section 54-03-28.
- Receive a report from DHS regarding the status of the children's prevention and early intervention behavioral health services pilot project pursuant to Section 3 of House Bill No. 1040 (2017).
- Receive a report from the State Department of Health on the results of the independent review of the tobacco prevention and control plan's effectiveness and implementation pursuant to Section 16 of Senate Bill No. 2004 (2017).
- Receive a report during the 2017-18 interim from the North Dakota Board of Social Work Examiners, Board of Addiction Counseling Examiners, Board of Counselor Examiners, and North Dakota Marriage and Family Therapy Licensure Board on the status of implementation of supervision and training requirements pursuant to Section 5 of Senate Bill No. 2033 (2017).
- Receive a report from the Task Force on Children's Behavioral Health regarding the task force's efforts and on its findings and recommendations and any proposed legislation necessary to implement the recommendations pursuant to Sections 4 and 5 of Senate Bill No. 2038 (2017).

Committee members were Senators Judy Lee (Chairman), Tom Campbell, Robert Erbele, Tim Mathern, and Nicole Poolman and Representatives Bert Anderson, Pamela Anderson, Gretchen Dobervich, Karla Rose Hanson, Karen Karls, Aaron McWilliams, Karen M. Rohr, Mary Schneider, and Kathy Skroch.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

STUDY OF DEVELOPMENTAL DISABILITIES AND BEHAVIORAL HEALTH NEEDS

Section 33 of House Bill No. 1012 (2017) directed a study of state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs. The study follows previous legislative studies from the 2013-14 interim and 2015-16 interim Human Services Committees' studies of behavioral health needs. The study must include the state's services and delivery systems, including whether changes are necessary to maintain compliance with state and federal laws and regulations; efforts by other states to comply with the 1999 *Olmstead v. L.C.* case, including the planning and implementation process for any new programs; community- and non-community-based services, including the costs and effectiveness of services; noncompliance with state and federal laws and regulations, including a review of the fees and penalties for noncompliance; a comparison of voluntary and involuntary compliance with state and federal laws and regulations, including a review of long-term costs and effectiveness; the impact of implementation and expansion of selected programs that were added to address unmet needs, including the impact on costs and effectiveness of new programs; needed changes to address noncompliance and a timeline for completing changes; data on the number

of individuals who would be impacted by voluntary compliance efforts, and data on the type of services that may need changing, including housing, peer counseling, outpatient treatment, crisis line access, and transportation services; and an evaluation of the funding, mission, and caseload at the Life Skills and Transition Center, including the center's transition plan and number of clients eligible for community placement.

Background

2013-14 Interim Human Services Committee - Study of Behavioral Health Needs

During the 2013-14 interim, the Human Services Committee was assigned a study of behavioral health needs pursuant to Section 1 of Senate Bill No. 2243 (2013). The study included consideration of behavioral health needs of youth and adults and consideration of access, availability, and delivery of services. The committee contracted with Schulte Consulting, LLC, to assist with the behavioral health needs study. The consultant's report identified six primary opportunities to better address behavioral health needs of youth and adults in North Dakota, which included service shortages, workforce expansion, insurance coverage changes, changes to the structure and responsibilities of DHS, communication improvement, and data collection and research expansion.

2015-16 Interim Human Services Committee - Study of Behavioral Health

During the 2015-16 interim, the Human Services Committee continued with a study of behavioral health needs pursuant to Section 7 of Senate Bill No. 2048 (2015). The study included consideration of behavioral health needs of youth and adults and access, availability, and delivery of services. As part of its study, the committee also reviewed key legal obligations related to behavioral health services.

Overview

Statutory References

North Dakota Century Code Section 50-06-01 defines "behavioral health" as the planning and implementation of preventative, consultative, diagnostic, treatment, crisis intervention, and rehabilitative services for individuals with mental, emotional, or substance use disorders, and psychiatric conditions.

North Dakota Century Code Section 25-01.2-01 defines "developmental disability" as a severe, chronic disability of an individual which is attributed to a mental or physical impairment, or combination of mental and physical impairments; is manifested before the individual attains age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more areas of major life activities; and reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

North Dakota Century Code Section 50-06-01.4 requires the structure of DHS to include the State Hospital, the regional human service centers, a vocational rehabilitation unit, and other units or offices and administrative and fiscal support services as the Executive Director determines necessary. The department must be structured to promote efficient and effective operations and consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of functions not otherwise by law made the responsibility of another state agency, including among others administration of programs for individuals with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation; and administration of behavioral health programs. To administer behavioral health programs, the section requires the department to establish a policy division responsible for reviewing and identifying service needs and activities in the state's behavioral health system in an effort to ensure health and safety, access to services, and quality of services; establishing quality assurance standards for the licensure of substance use disorder program services and facilities; and providing policy leadership in partnership with public and private entities. The department also must establish a service delivery division responsible for providing chronic disease management, regional intervention services, and 24-hour crisis services for individuals with behavioral health disorders.

North Dakota Century Code Section 25-04-01 provides for DHS to administer and control the Life Skills and Transition Center in Grafton for individuals with developmental disabilities. The purpose of the center is to maintain the relief, instruction, care, and custody of individuals with developmental disabilities or other individuals who may benefit from the services offered at the center; and to provide onsite and offsite additional services and effectuate its powers and duties to best serve individuals with developmental disabilities and other individuals who may benefit from those activities.

Department of Human Services - Organizational Structure

The mission of DHS is to provide quality, efficient, and effective human services, which improves the lives of people. The department is updating its vision, values, and how it measures success. The department anticipates

using a concept called *the social determinants of health* for its foundation for developing its vision and priorities. The concept is about the health and well-being of all, and includes:

- Economic stability - Including employment, level of income, expenses, debt, medical bills, and support.
- Neighborhood and physical environment - Including housing, transportation, safety, parks, playgrounds, and walkability.
- Education - Including literacy, language, early childhood education, vocational training, and higher education.
- Food - Including addressing hunger and providing access to healthy options.
- Community and social context - Including social integration, support system, community engagement, and preventing discrimination.
- Health care system - Including health coverage, provider availability, provider linguistic and cultural competency, and quality of care.

Behavioral Health Division

The committee received information from the Behavioral Health Division regarding its responsibilities and current initiatives. The Behavioral Health Division is responsible for reviewing and identifying service needs and activities in the state's behavioral health system in an effort to ensure health and safety, access to services, and quality of services; establishing quality assurance standards for the licensure of substance use disorder program services and facilities; and providing policy leadership in partnership with public and private entities. The division provides functions including regulation, administrative, workforce development, prevention and promotion, and partnerships. The regulation function includes licensing of various entities, including substance abuse treatment programs, opioid treatment programs, human service centers, psychiatric residential treatment facilities, driving under the influence seminar programs, and updating administrative rules. The administration function includes administering the mental health block grant, the substance abuse block grant, community and tribal prevention grants, the substance use disorder voucher, the problem gambling program, brain injury programs, and 2-1-1 services. The workforce development function includes providing training and technical assistance relating to best practices, program licensing, prevention, data collection, and evaluation; training through behavioral health conferences; training for mental health first aid, and establishing partnerships with various institutions and consortia. The prevention and promotion function includes creating resources, including the Parent's Listen, Educate, Ask, Discuss program, the Speaks Volume program, the prescription drug take back program, prevention and media center resources, and tribal and community prevention programs. The partnerships function includes providing support to other groups, including the Behavioral Health Planning Council, the children's behavioral health task force, the Governor's Prevention Advisory Council, the State Epidemiological Outcome Workgroup, the Brain Injury Advisory Council, and ND Cares Task Force.

Substance Use Disorder Voucher Program

The committee received an update regarding the substance use disorder voucher program which was implemented pursuant to Senate Bill No. 2048 (2015) and began in July 2016. The program was implemented to address barriers to treatment and increase the ability of people to access treatment and services for substance use disorders. The committee was informed 12 private substance abuse treatment providers were participating in the program as of July 2018. Of the 946 individuals who applied to receive a voucher, 913 were approved during the period of July 2017 to April 2018.

Justice Reinvestment Initiative - Free Through Recovery Program Update

The committee received updates regarding the Justice Reinvestment Initiative pursuant to Senate Bill No. 2015 (2017). The program is a partnership between the Department of Corrections and Rehabilitation and DHS. The behavioral health component of the Justice Reinvestment Initiative is called the free through recovery program. The mission of the free through recovery program is to improve health care outcomes and reduce recidivism by delivering high-quality community-based behavioral health services, linked with effective community supervision. The free through recovery program is a performance-based program, and providers of the program are reimbursed based on outcomes. The four outcomes being measured include stable housing, stable employment, recovery, and reduced criminal justice involvement. The payment includes a monthly base rate and a 20 percent incentive if the individual participants meet three of the four identified outcomes.

The reports stated services began on February 1, 2018, and the program serves individuals with a serious and persistent mental illness or a moderate or severe substance use disorder. Through April 2018, 328 referrals have been made and 289 participants have entered the program. The program has a capacity to serve up to 670 individuals. Sixty-eight percent of the participants had co-occurring disorders. Ninety percent of the participants

had a substance use need. Ninety-seven percent of the participants were at a moderate, moderate-high, or high risk for future crime. After 1 month of data, the committee was informed 78 percent of participants met three of the four outcomes.

University of North Dakota - School of Medicine and Health Sciences Center for Rural Health

The Behavioral Health Division contracted with the University of North Dakota - School of Medicine and Health Sciences Center for Rural Health to develop a report of available telehealth services for behavioral health. Testimony indicated telehealth services are being provided and are reimbursable for selected addiction services.

The division also contracted with the center to create a comprehensive behavioral health workforce development plan to increase the number of behavioral health providers and to facilitate the development of a peer support specialist certification. Recommendations included:

- Establish the infrastructure available to support and coordinate workforce development efforts;
- Develop and provide ongoing support for the paraprofessional behavioral health workforce; and
- Support the development and adoption of mechanisms to enhance the capacity of the existing workforce.

According to testimony, 43 states have established Medicaid reimbursable programs to train and certify peer specialists. The department is reviewing the possibility of developing a federal 1915(i) Medicaid state plan amendment. The department has provided four scheduled trainings throughout the state for peer support specialists and almost 100 individuals have been trained as peer support specialists. Eight individuals also have completed a Train the Trainer program, which allows individuals to provide peer support training.

Human Services Research Institute

The Behavioral Health Division contracted with the Human Services Research Institute for $160,000 to conduct a review of the state's behavioral health systems. The committee received the institute's report entitled *North Dakota Behavioral Health Systems Study - Final Report*. The report provided 65 specific recommendations in 13 areas. The 13 areas include developing a comprehensive implementation plan; investing in prevention and early intervention; ensuring individuals have timely access to appropriate behavioral health services; expanding the types of outpatient and community-based services; enhancing and streamlining the system of care for children and youth with complex needs; continuing to implement and refine the criminal justice system strategy; engaging in targeted efforts to recruit and retain a qualified and competent behavioral health workforce; continuing to expand the use of telebehavioral health interventions; ensuring the system reflects its values of person-centered, cultural competency, and trauma-informed approaches; encouraging and supporting communities to share responsibility with the state for promoting high-quality behavioral health services; partnering with tribal nations to increase health equity for American Indian populations; diversifying and enhancing funding for behavioral health; and conducting ongoing, systemwide, data-driven monitoring of need and access.

The department has also contracted with the institute for $178,000 to develop an implementation plan for the study. The department reported it will begin the first phase of implementation between September and October 2018. The first phase will include planning and organizing recommendations into categories to determine which recommendations require legislative involvement and which can be addressed by agency policies, licensing boards, providers, or advocacy groups. The second phase will include prioritization and refinement of the recommendations and will occur between November and December 2018. The third phase will include implementing the recommendations and will occur between January and March 2019. The fourth phase will include monitoring and sustaining implementation and will occur between April and June 2019.

State Hospital and Regional Human Service Centers

The committee received information from the State Hospital regarding its responsibilities and initiatives. Services at the State Hospital include traditional behavioral health hospital services, residential sex offender treatment, and residential substance use disorder treatment services under contract with the Department of Corrections and Rehabilitation. The committee was informed individuals must meet medical necessity to be admitted in a hospital setting. Individuals are committed to the State Hospital by voluntarily admitting themselves, by a guardian, or by a court order. The number of individuals served at the State Hospital has been consistent over the last 3 years.

The committee received information from the regional human service centers regarding their responsibilities and initiatives. Sixty percent of the staff at the regional human service centers are involved with providing behavioral health-related services. The remaining 40 percent are involved with a combination of developmental disabilities, child welfare, adult protection, and vocational rehabilitation services. Developmental disabilities services include eligibility determination, individualized service planning, and quality monitoring of community providers. Regional

supervision includes the supervision of child protection investigations, foster care licensing, foster care placement, and child care licensing. Adult protection services include adult protection investigations, education and training, and the coordination of services for individuals identified as vulnerable adults. Vocational rehabilitation services include a combination of assessment, counseling, and assistance for the purpose of attainment, and retraining for employment services. Behavioral health services at the regional human service centers are a combination of emergency, regional intervention, specialized assessment, and chronic disease management services. Emergency services include an open access model for the clinics, 24-hour crisis line, mobile crisis, social detoxification, crisis residential, and emergency services to jails. Regional intervention services are used for the purpose of identifying the least restrictive services necessary for an individual's care and providing the services in the local community whenever possible. Regional human service centers provide a combination of chronic disease management services, including self-management support, rehabilitation and recovery services, targeted case management, medication management services, psychotherapy services, hospital and residential services, skills training and skills integration, transitional living services, supported living arrangements, specialized homeless case management, supported employment services, and regional recovery centers. The reports revealed the unduplicated client count of individuals receiving public behavioral health services at the regional human service centers was 18,837 in state fiscal year 2017.

Open Access Clinical Model and Other Initiatives

The committee reviewed the effectiveness of the open access clinical model at the human service centers. The Department of Human Services began the open access clinical model initiative in September 2015. The model has been adopted by all the regional human service centers as of July 2017. The purpose of the open access model is to eliminate waiting lists. The committee was informed research has shown individuals are more likely to follow through and stay in care if care is available at the time of need. An average of 1,186 individuals are being assessed each month. One out of five individuals is referred to a private partner in the community. From the time of entry into the human service center to assessment averages 1 hour. From the assessment to the first treatment session is approximately 9 days.

The committee reviewed other initiatives at the regional human service centers. The Department of Human Services began evaluating and planning for the redesign and expansion of emergency services across the state in January 2018. The redesign will include crisis residential services. The department is adopting an interdisciplinary team model with clinical and psychosocial interventions that are integrated, individualized, long-term, and transitional. The model will be integral for recovery management and psychosocial rehabilitation services. The department is developing crisis services to recognize the different needs based on populations served, including adult mental health, adult substance abuse, children and family, and individuals with intellectual disabilities.

Developmental Disabilities Division

The committee received information from the Developmental Disabilities Division regarding its responsibilities and initiatives. The developmental disabilities services system provides services to individuals with an intellectual or developmental disability and children from birth to age 3 with developmental delays. Services include residential and day habilitation, employment, family support, self-directed, corporate guardianship, infant development, and right track. These services are paid with federal funds received through the Medicaid state plan, Medicaid 1915(c) Home and Community-Based waiver, and Part C of Individuals with Disabilities Education Act, and from the general fund. The following schedule provides information regarding the total unduplicated number of individuals who received developmental disabilities program management services:

	State Fiscal Year						
	2010	2011	2012	2013	2014	2015	2016
Unduplicated count of individuals receiving developmental disabilities program management	5,611	5,785	5,834	5,981	6,331	6,767	7,168

The testimony indicated the Medicaid 1915 (c) Home and Community-Based waiver is approved for a 3-year period and may be renewed for 5 additional years. The current waiver was approved in 2009 and the 5-year renewal period expires March 2019. The renewal must be submitted to the federal Centers for Medicare and Medicaid Services by January 1, 2019. The department is considering creating a children's waiver, changing eligibility requirements, and adding to the existing waiver.

Developmental Disabilities New Payment System

The committee received information regarding the new developmental disabilities payment system. The new payment system was implemented on April 1, 2018. The new system is based on a needs assessment for each individual served and rates standardized across all providers. A steering committee was created to review the new

payment system. The committee was informed some providers have expressed concerns regarding administrative time required to provide the monthly billing data, and the department is considering options to simplify the process.

Life Skills and Transition Center

The committee received information from the Life Skills and Transition Center regarding its responsibilities and initiatives. The Life Skills and Transition Center is a service provider included in the continuum of services for individuals with intellectual disabilities and serves as the "safety net." The center serves individuals who typically need the highest level of care and have unique and complex medical or behavioral health needs. Programs at the Life Skills and Transition Center include residential, vocational, and outreach services. Residential services include 24-hour comprehensive services and supports, including medical and clinical programming, services for adults with sexual offending behaviors, services for individuals needing skilled nursing or behavioral health services, and services for youth transitioning from the center to a community setting. Vocational services includes the Work Activity Program, which provides services for individuals at vocational work on-campus or at off-campus sites within the Grafton area. Outreach services include independent supported living arrangements; clinical assistance, resources, and evaluation clinic; and developmental disabilities behavioral health services. The report indicated the Life Skills and Transition Center is focusing on providing more outreach services. The Transition to the Community Task Force met in June 2018 and suggested changes to the mission and goals of the center, which involve community capacity building and better aligning the center with community providers.

The budget for the center is $58,860,913 for the 2017-19 biennium, of which $28,478,830 is from the general fund. The average number of clients per day was 74 in 2017. The center also served 234 individuals in other regions of the state in fiscal year 2016. Twenty-six individuals are on a priority planning list for community placement. The daily cost of serving an individual at the center is $981.77 per day. The daily cost of serving an individual at a community-based intermediate care facility ranges from $377.70 per day to $724.69 per day for adults, from $404.34 per day to $1,003.93 per day for children, and from $400.07 per day to $763.40 per day for physically handicapped adults. The rates for serving an individual at a community-based intermediate care facility do not include certain costs included in the Life Skills and Transition Center rates, such as dental and medical services.

Governor's Office - Office of Recovery Reinvented

The committee received information regarding a newly created Office of Recovery Reinvented. The office was created on January 9, 2018, pursuant to an executive order. The mission of the office is to promote strategic and innovative efforts to eliminate the shame and stigma associated with the disease of addiction. The office is funded through in-kind donations and grants from nonprofit organizations. An advisory council was created to provide insight and feedback to shape new and existing efforts. The office partnered with the DHS Behavioral Health Division to host a recovery reinvented event in September 2018. The office also is partnering with the First Lady to increase awareness and eliminate shame and stigma of addiction.

Olmstead and Mental Health Parity - Updates

The committee received information regarding the 1999 United States Supreme Court case *Olmstead v. L.C.* 527 U.S. 581 (1999) (Olmstead), and updates regarding mental health parity.

Olmstead v. L.C. and the Olmstead Commission

Olmstead is a United States Supreme Court case regarding discrimination against people with mental disabilities. In Olmstead, the Court found mental illness is a form of disability and unjustified isolation of a person with a disability is a form of discrimination under Title II of the Americans with Disabilities Act (ADA). The Court held community placement is required and appropriate only if "[a] the State's treatment professionals have determined that community placement is appropriate, [b] the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and [c] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." Since this 1999 decision, there has been litigation in each of the 12 United States Circuit Courts of Appeal. In addition to enforcement of the Olmstead decision through the court system or through agreements, the United States Attorney General published regulations for implementing the requirements of the ADA, including requirements from Olmstead, such as Title II, regarding state and local government services, and Title III, regarding public accommodations and commercial facilities.

The state is required to have a plan to address the Olmstead decision. The North Dakota Olmstead Commission met in November 2017 and March 2018 and adopted recommendations for restructuring the commission. The Governor signed an executive order in September 2018 to restructure the commission. The new governance includes a citizen member and a representative from the Governor's office as co-chairmen. Voting and nonvoting membership of the commission was changed from 13 voting members to 10 voting members. The commission also

is authorized to create subgroups as needed and to seek expertise for guidance and counsel regarding issues that may arise. The new structure will allow for a more statewide focus and allow for more input from all stakeholders.

The committee was informed the Protection and Advocacy Project will be the lead contact for the commission for individuals, providers, businesses, other government entities, and concerned citizens. As part of its 2019-21 biennium budget request, the Protection and Advocacy Project will request one Attorney II full-time equivalent (FTE) position for the Olmstead commission. The proposal will include total funding of $238,929, of which $164,314 is from the general fund, for the new position and related operating costs.

Mental Health Parity - Updates

The committee received information regarding the federal Mental Health Parity and Addiction Equality Act of 2008. The purpose of the Act is to prevent health insurance companies from placing more treatment limitations or financial requirements on services related to mental health or substance abuse than on surgical or medical services. The Act prohibits a health insurance policy from imposing nonquantitative treatment limitations on services related to mental health or substance abuse unless the limitations are comparable to and are not applied more stringently than factors used to apply limitations on surgical or medical services. The Insurance Commissioner issued Bulletin No. 2018-1 in July 2018, relating to insurance coverage of treatments for the autism spectrum disorder. Treatments for autism generally are considered a mental health service or benefit. The bulletin stated if an insurance company chooses to cover the autism spectrum disorder and seeks to place qualitative or nonqualitative treatment limitations on autism spectrum disorder treatments or benefits, the company must identify a similar limitation exists for the insurance coverage of surgical or medical services treatments and benefits. The bulletin also addressed coverage of applied behavior analysis therapies for autism. Applied behavior analysis therapies previously were considered an experimental or investigative therapy. Insurance companies no longer are allowed to classify applied behavior analysis therapies to treat children with autism spectrum disorder as an experimental or investigative therapy.

Other Information, Reports, and Testimony

The committee conducted a tour of the Life Skills and Transition Center. The committee received additional information and testimony relating to the developmental disabilities and behavioral health needs study, including the costs and effectiveness of community- and noncommunity-based services from representatives of the Anne Carlsen Center, Development Homes, Inc., Red River Human Services Foundation, Hit, Inc., Heartview Foundation, Vocational Training Center, Cass County Sheriff's office, Praxis Strategy Group, Upper Valley Special Education Unit, Self-Advocacy Solutions, Protection and Advocacy Project, The Arc of North Dakota, North Dakota Disabilities Advocacy Consortium, Mental Health America of North Dakota, Community Options, Grand Forks Housing Authority Board of Directors, Grand Forks Housing Authority, PATH North Dakota, Inc., Consumer and Family Network, North Dakota University Extension Service, North Dakota Association of Counties, Family Voices of North Dakota, and other stakeholders. The information and testimony received included:

- Recent developments in the related federal laws and rules and recent case law relating to the Olmstead decision;
- State plans to comply with the Olmstead decision;
- A survey of agency alcohol, drug, and risk-associated behavior prevention, treatment, and enforcement programs.
- Reviews of children's mental health services resources;
- Analysis of state institutions for individuals with an intellectual or developmental disability;
- A conference of State Court Administrators report entitled *2016-2017 Policy Paper - Decriminalization of Mental Illness: Fixing a Broken System*;
- Summaries of behavioral health-related awareness and prevention activities, and other educational and referral supports;
- Background regarding a new internship program called the Career, Readiness, Education, And Training, Experience for individuals with disabilities who want to work;
- Review of services for individuals on the autism spectrum;
- Background regarding a new behavioral health program to assist incarcerated individuals;
- Analysis of the impact of allowing more individuals with higher behavioral needs to be served in the community;
- Concerns regarding children with mental illness being excluded from Medicaid coverage;

- Concerns regarding a lack of services available for individuals with developmental disabilities and behavioral health needs;
- Consideration of all forms of evidence-based treatment and recovery services for the full continuum of care and for reimbursement of behavioral health services;
- Support for expanding the free through recovery program;
- Support for addressing gaps in adolescent services, recovery support services, medication-assisted treatment, dual-diagnosis treatment, and withdrawal management;
- Support for peer-to-peer support models;
- Support for the Human Services Research Institute *North Dakota Behavioral Health Systems Study*;
- Support for increasing community services for individuals with developmental disabilities;
- Support for continued "safety net" programs for dually diagnosed individuals with behavioral health concerns;
- Support for programs for students with intellectual disabilities who transition to the Life Skills and Transition Center;
- Support for increasing clinical assistance, resources, and evaluation services throughout the state;
- Personal experiences of individuals who are at, or who were at, the Life Skills and Transition Center; and
- Background regarding efforts to redevelop underutilized buildings at the Life Skills and Transition Center.

Recommendations

The committee recommends Senate Bill No. 2026 to establish a voucher system for mental health services. The bill draft:

- Appropriates $1,050,000 from the general fund and authorizes 1.50 FTE positions to the Department of Human Services for the system;
- Requires DHS to ensure private providers accepting vouchers collect and report process and outcome measures;
- Requires DHS to develop requirements and provide training and technical assistance to private providers accepting vouchers;
- Requires private providers accepting vouchers to provide evidence-based services; and
- Requires DHS to provide a report to the Legislative Management regarding the rules adopted to establish and administer the voucher system.

STUDY OF EARLY INTERVENTION SYSTEM FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

The committee was assigned a study of the state's early intervention system for children from birth to age 3 with developmental disabilities pursuant to Section 2 of Senate Bill No. 2325 (2017). The study was to include a historical overview of the system; funding mechanisms, including Medicaid; the broader implications of how the state's system interfaces with other early childhood systems; and responsibilities for implementing federal law directing states participating in Part C of the federal Individuals with Disabilities Education Act to locate and evaluate children from birth to age 3.

Overview

North Dakota Century Code Section 25-01.2-01 defines "developmental disability" as a severe, chronic disability of an individual which is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before the individual attains age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more areas of major life activity, which include self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic sufficiency; and reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

North Dakota Administrative Code (NDAC) Section 75-04-06-04 provides service eligibility for children from birth through age 2 is based on distinct and separate criteria designed to enable preventive services to be delivered. Young children may have conditions which could result in substantial functional limitations if early and appropriate

intervention is not provided. If a child, from birth through age 2, is either at high risk or developmentally delayed, the child may be included on the caseload of an intellectual disabilities-developmental disabilities case manager and considered for those services designed to meet specific needs. Eligibility for continued service inclusion through intellectual disabilities-developmental disabilities case management must be redetermined by age 3 using criteria specified in NDAC Section 75-04-06-02.1. For purposes of NDAC Section 75-04-06-04, "developmentally delayed" means a child, from birth through age 2 who is performing 25 percent below age norms in two or more areas, which include cognitive development; gross motor development; fine motor development; sensory processing; communication development; social or emotional development; or adaptive development; or who is performing at 50 percent below age norms in areas, which include cognitive development; physical development; communication development; social or emotional development; or adaptive development. "High risk" means a child, from birth through age 2, who based on a diagnosed physical or mental condition, has a high probability of becoming developmentally delayed; or based on informed clinical opinion documented by qualitative and quantitative evaluation information, has a high probability of becoming developmentally delayed.

Developmental Disabilities Division - Program Administration

The Department of Human Services' Developmental Disabilities Division administers the delivery of services for eligible individuals with an intellectual or developmental disability, and children birth through age 2 with developmental delays. Services administered by the division include residential and day supports, employment, family support, self-directed, corporate guardianship, infant development, and right track. Part C of the Individuals with Disabilities Education Act is a federal grant program that assists states in operating a comprehensive statewide program of early intervention services for infants and toddlers with disabilities, ages birth through 2 years of age and their families. States are not required to provide Part C services; however, if a state chooses to apply and accept the federal grant, services must be provided in compliance with federal requirements. Any state that accepts federal Part C funds is responsible for the costs of all Part C services regardless of whether federal funds are sufficient. Required Part C program activities include administrative activities, the child find system, service coordination, direct services, technical assistance, and interagency coordinating council. Activities the state supports, but are not required to support, include audiology and experienced parent services.

The Department of Human Services has hired a Part C Coordinator, which has increased the number of FTE positions, from 0.50 to 1.5, dedicated to the administration of the early intervention system for individuals with developmental disabilities.

Developmental Disabilities Division - Child Find Activities

The committee was informed regulations for the Part C program require each state to have a comprehensive child find system. The system must include identifying, locating, and screening all infants and toddlers with disabilities birth through age 2 as early as possible. The majority of individuals receiving early intervention services in the state are identified through child find activities, which include the birth review program and the use of birth review postcards and right track program screenings. The use of birth review postcards is a joint effort with DHS, the State Department of Health, and all birthing hospitals. Brochures for the right track screenings are given to families when a child is at the hospital. Right track providers conduct development screenings and observations to assist families in determining if a referral to the early intervention program is desired and appropriate. The right track program is a collaboration with the regional human service centers and private providers located throughout the state. The committee learned 48 percent of referrals for Part C services are from the right track program, 20 percent are from physicians and birthing hospitals, and 20 percent are from family members.

Eligibility Determination

County social service staff determine eligibility for economic assistance programs, including Medicaid. Eligibility determination must be completed if a family decides to receive early intervention services. Under the federal Part C program, families are not required to apply for Medicaid to receive infant development services. According to testimony, a number of families may be eligible for Medicaid, but choose not to apply. These family's early intervention services then generally are paid from federal Part C program funds which are limited. The Department of Human Services reported it has identified 37 children who may be Medicaid eligible but whose families have not applied for Medicaid services.

The committee received the following suggestions for improving access to the developmental disabilities Medicaid waivered services:

- Reconsider the application form or adopt a screening form that better identifies the type and scope of services being requested;

- Enhance training for both case managers and county eligibility staff on roles, programs, timelines, and other factors that may influence eligibility and services;
- Improve public awareness, including identifying the home- and community-based services program as a Medicaid program, and improving information available on the website and information in parent handbooks;
- Improve communication between DHS, county services, medical communities, and other key stakeholders; and
- Consider specialty units for determining eligibility for early intervention economic assistance applications.

Other Early Childhood Systems

The committee reviewed other early childhood systems. The committee received information from the Nurse-Family Partnership program. The Nurse-Family Partnership is a volunteer-based program that provides regular home visits to first-time, low-income mothers, beginning early in pregnancy and continuing through a child's 2nd year. The program is free and voluntary. The program began in Cass County in 2004 and is administered by the Fargo Cass Public Health Department. Approximately 160 families are served in Cass County. Funding for the program is provided by Cass County, the City of Fargo, Cass Clay United Way, and the Dakota Medical Foundation.

The healthy families program is a voluntary home visitation program. The program began in the city of Grand Forks and Nelson County in 2000 and expanded to Burleigh and Morton Counties in 2008. The program is designed to support families. In-home visits begin prenatally or after birth and continue until a child is 3 years of age. The program is free and serves all income levels.

Transition Services

The committee reviewed the process of children reaching 3 years of age and transitioning out of the early intervention system. The Department of Public Instruction partners with DHS to transition children from federal Part C early intervention programs to federal Part B special education services. Federal Part B eligibility requirements are different from requirements for the federal Part C early intervention programs. A child must be assessed by educational professionals to determine eligibility for the federal Part B special education services based on 1 of 12 disabilities categories. The 12 categories include autistic, deaf-blind, hearing impaired, other health impaired, orthopedically impaired, speech-language impaired, visually impaired, traumatic brain injured, intellectual disability, emotional disturbance, specific learning disability, and noncategorical delay. According to the testimony, over the past 5 years 30 to 39 percent of children being referred from the federal Part C early intervention programs have entered the educational system without a need for special education services. Each state education agency and school district must implement policies and procedures to ensure all children ages 3 and older with disabilities are identified and evaluated. There are 32 special education units in the state that typically hold preschool screenings several times throughout the year. The committee was informed DHS and the Department of Public Instruction will collaborate to identify child find activities across the state to determine if any activities can be combined.

Early Intervention System Task Force

The committee suggested DHS coordinate the formation of a task force comprised of representatives of DHS, providers of the early intervention system, and other stakeholders to review concerns with the early intervention system, and develop possible solutions for the committee's consideration. The task force was created and, in addition to holding numerous meetings, the task force held a summit on November 29, 2017, and prepared a report entitled *ND Early Intervention Solutions Summit Report* for the interim Health Services Committee. The summit focused its efforts in six areas of the early intervention system--child find activities, service coordination, delivery of early intervention services, administration and performance monitoring, family engagement, and professional development and technical assistance.

The task force identified the following number of children served in the state's early intervention system from fiscal years 2012 through 2016:

Early Intervention System	2012	2013	2014	2015	2016
Unduplicated number of children served in the early intervention system	1,743	1,933	2,298	2,565	2,694

Based on its review, the task force recommended the following:

- Identify opportunities to utilize Medicaid funds for direct services prior to the use of Part C funds or funds from the general fund;

- Develop a separate Medicaid application for families accessing the Medicaid waiver for their children only when their family income exceeds eligibility guidelines;
- Continue improving efforts between the county social services and the human service centers;
- Consider an ongoing study to review the feasibility of other funding options for the state's Part C early intervention system, including the use of private insurance through a direct billing arrangement or an insurance trust fund, the use of funds from the common schools trust fund, or other state funds;
- Establish a longitudinal data system and identify unique state identifiers for the data;
- Create efficient developmental screening and early childhood supports; and
- Consider adding a representative of the Department of Corrections and Rehabilitation to the Interagency Coordinating Council.

North Dakota Interagency Coordinating Council

The committee received information from the North Dakota Interagency Coordinating Council. The federal government requires the Governor to appoint a group of stakeholders to advise and assist the lead agency of the federal Part C program and the operation of those services. The council is to provide leadership for a coordinated statewide interagency system of comprehensive early intervention services and prevention awareness for children with disabilities and at-risk children. The council recommended:

- Supporting ongoing efforts and collaboration with the DHS Medical Services Division;
- Exploring alternative funding sources; and
- Continuing to seek opportunities for involvement with the North Dakota Interagency Coordinating Council for future changes to the state's Part C services.

Other Information and Testimony

The committee received additional information and testimony relating to the early intervention system for individuals with developmental disabilities study from other agencies and organizations, including representatives of Designer Genes of North Dakota, Anne Carlsen Center, Hit, Inc., North Dakota County Director's Association, Family Voices of North Dakota, and other stakeholders. The information and testimony included:

- A review of the allowable uses of the common schools trust fund;
- Concerns regarding a lack of adequate coordination of the federal Part C early intervention system program;
- Concerns regarding the financial sustainability of the early intervention system;
- Support for simplifying the Medicaid eligibility application process;
- Support for conducting eligibility testing every year for individuals in the early intervention system;
- A review of a flow chart of the early intervention system from a providers' point of view;
- Support for improving the payment system to allow services for more individuals in the state;
- A review of a flow chart of the Medicaid application process for eligibility determination; and
- A summary regarding the Family Voices of North Dakota Project Carson, which is an early intervention program that connects families with a child who receives a prenatal or adverse diagnosis to other families who have gone through the same experience.

Recommendations

The committee makes no recommendations regarding its study of the early intervention system for individuals with developmental disabilities.

REPORT ON IGNITION PROPENSITY STANDARDS

The Legislative Assembly approved House Bill No. 1368 (2009), which created NDCC Chapter 18-13 related to reducing ignition propensity standards for cigarettes and penalties for wholesale and retail sale of cigarettes that violate the reduced propensity standards. This chapter provides for the enforcement of ignition propensity standards for cigarettes 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. 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. In addition, NDCC 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 Management 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 committee received a report from the State Fire Marshal, which included a summary of test methods, performance standards, and certification results. According to the data collected from North Dakota's National Fire Incident Reporting System, there was an increase in fires caused by cigarettes from 2010 to 2017, but a decrease in the fire injuries and deaths related to smoking. Annual statistics indicate the increase in cigarette fires is related to the increase in total fires. The percentage of fires caused by smoking in the state remains stable. The number of cigarettes certified since the program's inception in 2010 is 1,305. The number of cigarettes currently certified is 1,001. The committee received two recommendations from the State Fire Marshal to improve effectiveness of the law on reduced ignition propensity standards for cigarettes:

- Amend NDCC Section 18-13-02 to provide clearer direction regarding the standard to use and allow the State Fire Marshal's office to enforce the most recent and safest standards; and
- Amend NDCC Section 18-13-02 to include “any product to be rolled for smoking,” which will help maintain commercial competition requirements for similar products and ensure fire safety standards continue to be met in the future.

REPORT ON PLANS TO REDUCE THE INCIDENCE OF DIABETES IN THE STATE

The Legislative Assembly approved House Bill No. 1443 (2013), which amended NDCC Section 23-01-40 to require DHS, the State Department of Health, the Indian Affairs Commission, and PERS to 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. The agencies are to report on the plans to the Legislative Management. The committee was assigned the responsibility to receive this report.

The committee received a report entitled *Diabetes in North Dakota 2018*. The goals identified in the report include expanding the national diabetes program pilot project to 7 cities in the state--Bismarck, Mandan, Jamestown, Minot, Fargo, Grand Forks, and Dickinson in the 2019-21 biennium; evaluating the efficacy of the pilot project to determine whether the program should be added to the PERS health plan; implementing a statewide diabetes prevention action plan; increasing awareness of pre-diabetes and the National Diabetes Prevention Program; identifying the availability of the National Diabetes Prevention Program in underserved regions of the state; increasing the rate of screening, testing, and referral of individuals with pre-diabetes to the national diabetes prevention program; increasing insurance coverage of the National Diabetes Prevention Program by state health plans; and continuing to support and expand diabetes care in education programming in underserved areas of the state.

The committee was informed benchmarks were established to monitor the effectiveness of strategy implementation. Diabetes prevalence in the state has remained stable at 8.6 percent. Pre-diabetes is estimated to affect approximately 34 percent of the state's population. The report included the following recommendations:

- Support coverage of the National Diabetes Prevention Program for the PERS health plan beneficiaries;
- Support healthy, vibrant communities; and
- Support policies that improve outcomes for individuals with or at risk for diabetes and other chronic diseases.

REPORT ON IMPROVEMENTS TO CARE FOR INDIVIDUALS WITH STROKE

The Legislative Assembly approved House Bill No. 1323 (2015), which amended NDCC Section 23-43-04 to require the State Department of Health to establish and implement a plan for achieving continuous improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment, establish a data oversight process, and implement a plan for achieving continuous improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment. The committee was assigned the responsibility to receive this report.

The committee received a report from the State Department of Health which stated the state's stroke system was created in 2009 to establish a comprehensive, coordinated, efficient system for the continuum of health care for individuals suffering a stroke. The system is administered by the State Department of Health and stroke partners, including the American Heart Association, critical access hospitals, tertiary hospitals, and the North Dakota

Emergency Medical Services Association. The stroke system of care has developed statewide stroke guidelines for the care and transport of stroke patients that arrive at critical access hospitals. Two Fargo hospitals are designated as comprehensive stroke centers, four tertiary hospitals in the state are designated as primary stroke centers, and 30 critical access hospitals in the state are designated as acute stroke-ready hospitals. Thirty-three percent of stroke patients are 18 to 65 years of age and 49 percent are 66 to 85 years of age. The report indicated a goal is to identify stroke patients quickly and provide appropriate treatment. An average stroke patient loses 1.9 million brain cells for each minute treatment of stroke is delayed. Hospitals that do not have computed tomography scanners are encouraged to immediately transport the stroke patient. The State Department of Health made no recommendation regarding future legislation.

Testimony from Interested Persons

The committee received information from interested persons regarding the comprehensive stroke system. Key items expressed include concerns regarding sufficient state funding for core system components, and concerns regarding the state's definition of brain injury and how the definition is impacting access to work for some stroke survivors.

The federal Traumatic Brain Injury Act of 1996 defined brain injury as an injury based on an external force. Many states including North Dakota adopted this definition, but have since expanded the definition to include an acquired brain injury model. North Dakota recently expanded its definition, but added exclusionary provisions. Nontraumatic encephalopathy, nontraumatic aneurysm, and stroke were excluded from the definition. The committee was informed the state's statutory definition for brain injury has become very clinical, whereas, other statutory definitions, including serious mental illness and developmental disability are more broad. According to testimony 19 individuals from the North Dakota Brain Injury Network and 4 individuals from the Community Options program were denied services during the state fiscal years 2015 through 2017 because of the definition. Benefits of including post-stroke patients in the brain injury definition include avoiding the need to develop a duplicate support process; providing medical providers and the health care community one source of information regarding available next steps; providing post-stroke patients with access to agency specialists able to review the patients' coverage options; and providing data for further evaluation of post-stroke brain injury inquiries, disability level, and unmet needs.

Committee Recommendations

The committee recommends Senate Bill No. 2027 to broaden the statutory definition of brain injury.

HEALTH INSURANCE MANDATES - COST-BENEFIT ANALYSIS

North Dakota Century Code 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 2019 legislative session. The Insurance Commissioner must 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.

North Dakota Century Code Section 54-03-28 also 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, to attach 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.

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 2007 legislative session, there were no health insurance mandates referred for cost-benefit analysis. During the 2009 legislative session, the Insurance Department paid a total of $28,070 to Milliman USA for analyses of three bills. During the 2011 legislative session, the Insurance Department paid a total

of $14,982 to Milliman USA for analysis of one bill. During the 2013 legislative session, there were no health insurance mandates referred for cost-benefit analysis. During the 2015 legislative session, the Insurance Department paid a total of $26,564 to Milliman USA for analyses conducted on three bills. During the 2017 legislative session, the Insurance Department paid a total of $17,200 to Acumen Actuarial LLC for analysis of one bill.

Insurance Commissioner Recommendation

The Insurance Commissioner received proposals from NovaRest, Inc., Arthur J. Gallagher & Co., Milliman, Inc., and Acumen Actuarial LLC, which were evaluated 60 percent on bidder qualifications and 40 percent on cost. NovaRest, Inc., scored 10 points, Arthur J. Gallagher & Co., scored 6.7 points, Milliman, Inc., scored 6.4 points, and Acumen Actuarial LLC, scored 7.9 points. The Insurance Commissioner recommended, based on the proposals received, the Legislative Council contract with NovaRest to perform cost-benefit analysis during the 66th Legislative Assembly.

Recommendation

The committee recommends the Legislative Council contract with NovaRest, Inc., for cost-benefit analyses of legislative measures considered by the 66th Legislative Assembly mandating health insurance coverage pursuant to NDCC Section 54-03-28.

REPORT ON CHILDREN'S PREVENTION AND EARLY INTERVENTION BEHAVIORAL HEALTH SERVICES PILOT PROJECT

Section 3 of House Bill No. 1040 (2017) appropriates $150,000 from the general fund to DHS for the purpose of establishing a children's prevention and early intervention behavioral health services pilot project in the school system of the department's choice, including services relating to children suffering from the effects of behavioral health issues. The bill also requires DHS to provide a report to the Legislative Management before September 1, 2018, regarding the status of the children's prevention and early intervention behavioral health services pilot project. The committee was assigned to receive this report.

The committee was informed an informal group of stakeholders met during the 2017-18 interim to identify solutions for addressing mental health and substance use issues in schools. The group included representatives of school administrators, special education, higher education, Department of Public Instruction, rural and urban schools, Department of Corrections and Rehabilitation, DHS, and the Council of Educational Leaders. The committee learned the group identified gaps between the behavioral health system and the educational system that had to be addressed before a pilot project could begin. The group reviewed the system and identified the following needs:

- Improve training and resources for schools and behavioral health professionals;
- Increase utilization of screening and early intervention services;
- Improve access to clinical services when needed both within the school and externally; and
- Provide recovery support during transitions from out of home services to school.

The department indicated it planned to open an invitation for elementary and middle schools to apply for the pilot project in August 2018. After the committee completed its work, DHS issued a public notice on October 3, 2018, stating the Behavioral Health Division awarded funding for a behavioral health school pilot project to Simle Middle School in Bismarck.

TOBACCO PREVENTION AND CONTROL PLAN

Section 16 of Senate Bill No. 2004 (2017) requires the State Department of Health to provide a report to the Legislative Management regarding the development of a statewide tobacco prevention and control plan that is consistent with the five components of the Centers for Disease Control and Prevention's *Best Practices for Comprehensive Tobacco Control Programs*. The committee was assigned to receive this report.

The state's comprehensive tobacco prevention and control plan is based on the federal Centers for Disease Control and Prevention's *Best Practices for Comprehensive Tobacco Control Programs*. The state's plan has four goals:

- Preventing initiation of tobacco use among youth and young adults;
- Eliminating exposure to secondhand smoke;
- Promoting quitting tobacco use; and

- Building capacity and infrastructure to implement a comprehensive evidence-based tobacco prevention and control program.

The state plan was finalized in October 2017 and the department is working with Professional Data Analysts Inc., to provide an independent review and overall evaluation of the effectiveness and implementation of the state plan. According to the reports, the data for the 2017 and 2018 state fiscal years is being compiled and analyzed and a report will be issued later in the 2017-19 biennium. Professional Data Analysts, Inc. provided preliminary evaluation results for the fiscal year ending June 30, 2018, and does not anticipate major changes to the state plan. The committee was informed key focus areas that continue from the previous plan include:

- Educating the public and policymakers of the need to increase the price of tobacco products to decrease youth and adult smoking rates;
- Protecting the statewide smoke-free indoor air law;
- Working with health systems to implement cessation protocols and referrals to the statewide telephone cessation program called NDQuits;
- Delivering health communication messages relating to changing social norms relating to tobacco;
- Utilizing surveillance and evaluation to assess tobacco use in the state and determine the effectiveness of the program;
- Engaging youth in tobacco advocacy efforts at the local level;
- Increasing collaboration with DHS regarding tobacco retailer compliance checks and cessation; and
- Implementing bidirectional referrals to NDQuits through electronic health records and send updates to primary care providers.

Testimony from Interested Persons

The committee received testimony relating to increasing the tax rates on tobacco products.

REPORT FROM BEHAVIORAL HEALTH PROFESSIONAL BOARDS

Senate Bill No. 2033 (2017) provided that a portion of the supervised experience to qualify for licensure as a clinical social worker, counselor, or marriage and family therapist may be provided by a licensed behavioral health professional other than the profession being licensed. The bill allowed an applicant for licensure as a clinical social worker to meet the supervised experience requirement through experience in the practice of clinical social work, and allowed the Board of Social Work Examiners additional flexibility in accepting licensure from other jurisdictions. Section 5 of the bill required the North Dakota Board of Social Work Examiners, Board of Addiction Counseling Examiners, Board of Counselor Examiners, and North Dakota Marriage and Family Therapy Licensure Board to provide a report to the Legislative Management regarding the status of implementing these changes. The committee was assigned the responsibility to receive this report.

North Dakota Board of Social Work Examiners

The committee received information from the Board of Social Work Examiners. Senate Bill No. 2033 modified the standard under which applicants for clinical social work obtain the necessary 3,000 hours of supervised experience. The second 1,500 hours of the 3,000 hours now can be obtained under the supervision of licensed professionals other than a licensed independent clinical social worker if geographic or other factors make the modification reasonable. The bill also created an alternative way of receiving licensure by reciprocity. The board may grant a license even if the laws of the two states are not substantially similar if the applicant is licensed in good standing under the laws of another jurisdiction and possesses qualifications or experience in the practice of social work which are substantially similar to the minimum requirements for licensure in this state. The testimony indicated the board streamlined licensing procedures. A license may be issued in 2 to 4 weeks if an applicant submits all required information and meets all of the criteria. The board also authorized two of its board members to approve initial licenses and master of social work supervision plans if no further issues need to be discussed. Issues may include background checks, mental health history, whether applicant is in good standing, or if clinical work does not meet criteria. The committee was informed the challenge with social work licensure is that states use different social worker titles and each title has different licensing requirements.

Board of Addiction Counseling Examiners

The committee received information from the Board of Addiction Counseling Examiners. The board collaborated with the Board of Counseling Examiners and the North Dakota Board of Social Work Examiners to review and encourage dual licensure. The board proposed Administrative Code changes to allow a National Association of

Addiction Professionals National Certified Addiction Counselor Level II certification or a Master Addiction Counselor certification to become licensed and accepted immediately without an academic or clinical training review. Any applicant with a verifiable license or certification in good standing from another jurisdiction may be accepted immediately as an intern until the academic and clinical training reviews or any other outstanding items are complete. The committee was informed any advanced practice professionals established in Senate Bill No. 2042 (2017), including medical doctors, psychologists, advanced practice registered nurses, and physician assistants, will not have the academic requirements, but may have minimal clinical training requirements to become licensed. Other advanced practice professionals, including licensed independent clinical workers, licensed professional clinical counselors, and licensed marriage and family counselors may be licensed with minimal training requirements.

Board of Counseling Examiners

The committee received information from the Board of Counseling Examiners which indicated the board was reviewing its process and anticipated proposing Administrative Code changes.

Marriage and Family Therapy Licensure Board

The committee received information from the Marriage and Family Therapy Licensure Board which indicated the state's licensure standards for marriage and family therapists are similar to the licensure standards of other states; therefore, there are no impediments preventing individuals licensed in other states from becoming licensed in North Dakota nor preventing individuals receiving an education in a different state from becoming licensed in North Dakota.

Board of Psychologist Examiners

The committee received information from the Board of Psychologist Examiners. The board proposed the following administrative changes:

- Adding operational data to expedite licensure permitting the board to allow qualified applicants licensed or certified outside the state to practice while waiting for completion of licensure in this state;
- Allowing the Professional Responsibility Examinations to be administered in written form;
- Easing the process to obtain approval for continuing education sponsors;
- Clarifying the relationship with the Educational Standards and Practices Board regarding school psychologists;
- Clarifying board membership requirements for nonpractitioner members and allowing applied behavior analysts to be eligible for serving on the board; and
- Adding supervision changes that align qualifications of those receiving training with the work credentials of the mentor.

Other Information and Testimony

The committee received additional information and testimony relating to board licensure from representatives of the Department of Corrections and Rehabilitation, North Dakota County Social Service Director's Association, the North Dakota University System, and other stakeholders. The information and testimony included:

- Comments regarding professional and occupational licensure restrictions;
- Background regarding behavioral health-related board statutory provisions, including statutory requirements for appointment to behavioral health-related occupational boards;
- A summary of a National Conference of State Legislatures' report entitled *The State of Occupational Licensing - Research, State Policies and Trends*;
- A summary of recent legislation passed by the state of Nebraska relating to licensing board rules;
- Discussion of commonalities of educational curriculum for various counseling-related professions;
- Concerns of disciplinary actions relating to adequate training and supervision;
- Concerns relating to supervision requirements of social workers and the expansion of the board's regulatory responsibilities;
- Concerns relating to the oral examination process for becoming a licensed psychologist and other challenges of becoming licensed as a psychologist or counselor in the state; and

- Concerns regarding challenges for international students applying for licensure to practice as a psychologist in the state.

At the committee's request the North Dakota Board of Social Work Examiners, North Dakota County Social Service Director's Association, and other licensed social workers met to discuss concerns expressed during the 2017-18 interim. A representative of the North Dakota Board of Social Work Examiners stated the board anticipates introducing a bill in the 2019 legislative session to address licensure concerns.

REPORT FROM TASK FORCE ON CHILDREN'S BEHAVIORAL HEALTH

Sections 4 and 5 of Senate Bill No. 2038 (2017) created the Task Force on Children's Behavioral Health for the purpose of assessing and guiding efforts within the children's behavioral health system to ensure a full continuum of care is available in the state. The task force includes the Superintendent of Public Instruction, the Executive Director of DHS, the State Health Officer, the Executive Director of the Indian Affairs Commission, and the Director of the Committee on Protection and Advocacy. The task force is required to assess and guide efforts within the children's behavioral health system to ensure a full behavioral health continuum of care is available in the state; make recommendations to ensure the children's behavioral health services are seamless, effective, and not duplicative; identify recommendations and strategies to address gaps or needs in the children's behavioral health system; engage stakeholders from across the continuum to assess and develop strategies to address gaps or needs in areas including education, juvenile justice, child welfare, community, and health; and provide a report to the Legislative Management every 6 months regarding the task force's efforts. The committee was assigned the responsibility to receive these reports.

The committee was informed the task force also includes members from the Department of Juvenile Services and tribal areas. The report indicated the task force is focusing efforts to develop strategies to address gaps or needs in education, juvenile justice, child welfare, community, and health. The Department of Human Services has contracted with the Consensus Council to manage and facilitate task force meetings. The council is developing a matrix of services, including service providers and who qualifies for services. The task force strategies include interagency agreements, statutory changes, and proposed funding. The task force developed recommendations in areas including adoption of school seclusion and restraint policy and practices guidelines, formation of a state-level children's services committee and regional children's services committees, suicide prevention, bullying prevention and intervention, sufficient and sustainable funding, expanded emergency care resources, juvenile court rules for maltreatment, state and tribal service collaboration, early intervention, and substance exposed newborn services.

OTHER INFORMATION

The committee received information from the State Department of Health regarding the members appointed by the Governor to serve as the advisory committee to the State Health Officer pursuant to NDCC Section 23-01-05, information regarding changes to the structure of the department and grant opportunities; and information regarding the department's newborn screening program and metabolic foods program.

HIGHER EDUCATION COMMITTEE

The Higher Education Committee was assigned the following studies:

- Section 34 of Senate Bill No. 2003 (2017) provided for a study of the relationship between the University of North Dakota (UND) and the Energy and Environmental Research Center (EERC).
- By Legislative Management directive, the committee was assigned the responsibility to study higher education finances and the overall financial stability of institutions under the control of the State Board of Higher Education (SBHE).

The committee was delegated by the Legislative Management the responsibility to:

- Receive annual reports from SBHE regarding the number of North Dakota academic scholarships and career and technical education (CTE) scholarships provided and demographic information pertaining to the recipients, pursuant to North Dakota Century Code Section 15-10-59.
- Receive a biennial report from the UND School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the school, pursuant to Section 15-52-04.
- Receive a report from any tribally controlled community college receiving a grant under Chapter 15-70 detailing grant expenditures and recipient demographics, pursuant to Section 15-70-05.
- Receive a report from SBHE regarding the transfer of appropriation authority from the operations line item to the capital assets line item by any North Dakota University System institution, pursuant to Section 20 of Senate Bill No. 2003 (2017).
- Receive a report from SBHE regarding the status of efforts to collaborate with Minnesota entities for research network purposes, pursuant to Section 33 of Senate Bill No. 2003 (2017).
- Receive a report from SBHE regarding the status of inconsistencies in employee classifications and human resources reporting, employee leave policies, practices for awarding tuition waivers, and practices regarding the charging of student fees, including policies and procedures being developed to address the inconsistencies, pursuant to Section 37 of Senate Bill No. 2003 (2017).
- Receive a report from SBHE regarding the total number of employee positions reduced at each institution, the number of administrative positions reduced at each institution, and whether any former administrative staff employees are still employed by the institution in a different position, pursuant to Section 38 of Senate Bill No. 2003 (2017).

Committee members were Representatives Mark Sanford (Chairman), Thomas Beadle, Rich S. Becker, Lois Delmore, Richard G. Holman, Dennis Johnson, Andrew G. Maragos, Bob Martinson, Lisa Meier, Gary Paur, and Mike Schatz and Senators Robert Erbele, David Hogue, Ray Holmberg, Karen K. Krebsbach, Carolyn C. Nelson, Larry J. Robinson, and Jim P. Roers.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

BACKGROUND

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, have gathered input through the use of a higher education roundtable, which consisted of members of the Higher Education Committee and representatives from SBHE; business and industry; the executive branch; and higher education institutions, including tribal and private colleges.

University System Information

The University System consists of 11 higher education institutions under the control of SBHE. 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.

The legislative appropriations for the 2017-19 biennium for higher education institutions and the University System office totaled $2,685,747,055, of which $625,796,780 was from the general fund. Of the total general fund appropriation amount, $12,554,626 was considered one-time funding.

The University System reported fall 2017 total degree credit headcount enrollment of 46,787 students and a total degree credit full-time equivalent (FTE) enrollment of 37,398 students, compared to fall 2016 headcount enrollment of 47,236 students and FTE enrollment of 37,873 students.

UNIVERSITY OF NORTH DAKOTA ENERGY AND ENVIRONMENTAL RESEARCH CENTER STUDY

Section 34 of Senate Bill No. 2003 (2017) provided for a study of the relationship between UND and EERC. The study was to include a review of the working relationship between the entities, including financial responsibilities and expectations of each entity and including potential alternative administrative reporting lines and business models.

The Energy and Environmental Research Center was officially founded in 1951 as the Robertson Lignite Research Laboratory, a federal facility under the United States Bureau of Mines. The center became a federal energy technology center under the United States Department of Energy in 1977 and was defederalized in 1983, at which time it became part of UND. Since its defederalization, EERC has evolved to conduct research on all fossil fuels, as well as renewable and alternative fuels, and has become a leader in the field of pollution prevention and environmental cleanup technologies. The center is operated by UND on a self-sustaining basis and does not receive a specific state appropriation.

The committee received information regarding research conducted at EERC. Representatives of EERC suggested the state create a state energy research center at UND to ensure North Dakota's energy resources and products remain accessible, affordable, environmentally responsible, and understood. The proposed research center, with an initial state investment of $12 million, would specifically focus on precommercial and fundamental research to complement existing state programs.

Representatives of UND reported meetings were held regarding the working relationship with EERC and issues with the relationship had been resolved.

Conclusion

The committee makes no recommendation regarding its study of the relationship between UND and EERC.

HIGHER EDUCATION FINANCES STUDY

The Legislative Management directed the committee to study higher education finances and the overall financial stability of institutions under the control of SBHE. The study was to include a review of the finances of each institution, including short- and long-term debt obligations, operating income margins, estimated future tuition income, institutional reserves, and anticipated future funding changes through the higher education funding formula.

Institution Revenues

The University System reported institution funding sources include state funds, tuition and fees, grants and contracts, sales and services, auxiliary enterprises, and other sources. Total fiscal year 2016 revenue ranged from $9.3 million at Dakota College at Bottineau to $451.7 million at UND. Fiscal year 2016 revenues by institution are listed in the following schedule (amounts in millions):

Institution	State Funds	Tuition and Fees	Grants and Contracts	Sales and Services	Auxiliary Enterprises	Other	Total
Bismarck State College	$17.8	$13.1	$11.2	$4.0	$3.9	$2.0	$52.0
Dakota College at Bottineau	4.2	1.2	2.0	0.2	1.4	0.3	9.3
Lake Region State College	7.1	3.9	3.8	0.8	1.8	1.2	18.6
North Dakota State College of Science	19.8	7.7	5.2	3.5	8.5	1.5	46.2
Williston State College	6.0	0.7	3.3	2.9	2.2	3.3	18.4
Dickinson State University	12.8	6.1	2.5	0.7	2.6	1.6	26.3
Mayville State University	7.9	4.5	5.4	1.1	2.5	1.0	22.4
Minot State University	23.7	14.7	9.3	2.0	4.1	2.5	56.3
Valley City State University	11.4	6.1	2.2	0.8	3.0	0.5	24.0
North Dakota State University	128.7	114.6	70.5	33.9	44.1	24.8	416.6
University of North Dakota	113.1	138.0	92.2	55.0	35.6	17.8	451.7
Total	$352.5	$310.6	$207.6	$104.9	$109.7	$56.5	$1,141.8

Legislative Appropriations

Legislative appropriations for the 2017-19 biennium for higher education institutions and the University System office total $2,685,747,055, of which $625,796,780 is from the general fund. The following is a history of legislative appropriations for higher education 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	$910,632,494	$177,980,941	$1,088,613,435
2015-17	$837,849,212	$66,644,264	$904,493,476
2017-19	$625,796,780	$2,059,950,275	$2,685,747,055

NOTE: The special funds amounts for the 1997-99 biennium reflect the appropriation of tuition income. The special funds amounts for the 1999-2001 and 2017-19 bienniums reflect the appropriation of tuition and local funds. The special funds amounts for the 2001-03 through 2015-17 bienniums include capital projects funding and money appropriated from state special funds.

The following is a summary of ongoing and one-time general fund appropriations for the University System since the 2007-09 biennium:

General Fund Appropriations			
Biennium	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	$231,360,648	$910,632,494
2015-17	$681,876,059	$155,973,153	$837,849,212
2017-19	$613,242,154	$12,554,626	$625,796,780

Previous Higher Education Funding Methods

The 1999-2000 Higher Education Roundtable recommended SBHE and the Chancellor of the University System 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 long-term financing plan and resource allocation model used prior to the 2013-15 biennium included the following:

- 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 SBHE 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 use of the funding provided to each of the institutions was left to the discretion of the institution with appropriate approvals by SBHE 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 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

The Legislative Assembly, in Senate Bill No. 2200 (2013), adopted a higher education funding method beginning with 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 institutional funding.

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:

Institutions	Biennial Base Rate Per Credit-Hour		
	2013-15	2015-17	2017-19
North Dakota State University, University of North Dakota	$66.35	$72.63	$58.65
Dickinson State University, Mayville State University, Valley City State University	$95.57	$107.33	$86.95
Minot State University	$98.75	$107.33	$86.95
Bismarck State College, Dakota College at Bottineau, Lake Region State College, North Dakota State College of Science	$101.73	$114.88	$93.03
Williston State College	$104.88	$114.88	$93.03

Through June 30, 2019, by state law, an institution may not receive less than 96 percent of the state funding 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.

Preliminary 2019-21 Biennium Funding Formula Calculations

The 2019-21 biennium higher education funding formula calculations will be based on student credit-hours completed during the 2015-17 biennium. The preliminary calculations for the 2015-17 biennium indicate 7,609,001 adjusted student credit-hours were completed at institutions. The 2015-17 biennium adjusted student credit-hours amount represents an increase of 64,455, or 0.9 percent, in completed adjusted student credit-hours from the 2013-15 biennium.

The University System reported the following preliminary funding formula calculations for the 2019-21 biennium:

Institution	2017-19 Biennium Base Budget	2019-21 Biennium Preliminary Funding Formula Calculation	Increase (Decrease)	
Bismarck State College	$30,600,597	$29,778,252	($822,345)	(2.7%)
Dakota College at Bottineau	7,652,945	7,419,422	(233,523)	(3.1%)
Lake Region State College	12,700,623	12,407,783	(292,840)	(2.3%)
North Dakota State College of Science	35,089,376	35,024,772	(64,604)	(0.2%)
Williston State College	8,360,503	9,649,723	1,289,220	15.4%
Dickinson State University	17,806,843	17,578,334	(228,509)	(1.3%)
Mayville State University	14,249,605	15,693,258	1,443,653	10.1%
Minot State University	39,750,979	37,450,061	(2,300,918)	(5.8%)
Valley City State University	20,429,502	20,211,528	(217,974)	(1.1%)
North Dakota State University	128,591,042	127,874,712	(716,330)	(0.6%)
University of North Dakota	191,944,182	198,528,171	6,583,989	3.4%
Total	$507,176,197	$511,616,016	$4,439,819	0.9%

The preliminary 2019-21 biennium funding calculation for Minot State University would be $38,160,940 if the 96 percent minimum amount payable clause in the higher education funding formula were to be extended. Extension of the 96 percent minimum amount payable clause would result in a reduction of funding for the institution of $1,590,039 rather than $2,300,918 if the minimum amount payable clause is not continued.

Tuition and Fees

The University System reported tuition and mandatory fees at University System research and 4-year campuses are lower than regional and contiguous states' averages. The University System reported 2-year campus tuition and mandatory fee rates are higher than the regional average but lower than the contiguous states' average.

The University System reported SBHE is working with University System institutions to revise campus tuition models. The new statewide tuition model principles provide for the blending of tuition and nonmandatory fees, consistent on-campus and online tuition rates, a flat tuition rate if a student enrolls in more than 12 or 13 credits, and increased tuition rates for Minnesota resident students, other nonresident students, and international students. The tuition model principles approved by the board provide for the assessment of tuition based on residency as follows:

- Minnesota resident students - 1.12 times the resident rate
- Other nonresident United States, Manitoba, and Saskatchewan students - No lower than 1.2 times the resident rate
- Other international students - No lower than 1.75 times the resident rate

Subsection 2 of Section 27 of Senate Bill No. 2003 (2017) provides SBHE may not increase the tuition rates for resident students for the 2018-19 academic year by more than 4 percent compared to the tuition rate in effect during the 2017-18 academic year unless the board receives prior approval from the Budget Section. However, subsection 6 provides SBHE may exclude adjustments to a tuition rate resulting from a change in an institution's method of charging tuition, including the consolidation of existing fees into tuition rates or charging tuition based on a per-credit rate. The State Board of Higher Education approved new tuition models for Bismarck State College and North Dakota State University for the 2018-19 academic year. The University System reported new tuition models would be adopted by the other nine campuses for the 2019-20 academic year. Basic resident and nonresident undergraduate tuition rates for the 2017-18 and 2018-19 academic years are identified in the following schedule:

Institution	2017-18 Tuition Rates		2018-19 Tuition Rates		Percentage Change	
	Resident	Nonresident	Resident	Nonresident	Resident	Nonresident
Bismarck State College	$3,791	$10,120	$3,990	$5,985	5.2%	(40.9%)
Dakota College at Bottineau	$3,607	$5,411	$3,751	$5,627	4.0%	4.0%
Lake Region State College	$3,459	$3,459	$3,598	$3,598	4.0%	4.0%
North Dakota State College of Science	$3,925	$10,479	$4,082	$10,898	4.0%	4.0%
Williston State College	$3,535	$3,535	$3,676	$3,676	4.0%	4.0%
Dickinson State University	$5,344	$8,015	$5,558	$8,336	4.0%	4.0%
Mayville State University	$5,255	$14,032	$5,465	$14,593	4.0%	4.0%
Minot State University	$5,400	$5,400	$5,616	$5,616	4.0%	4.0%
Valley City State University	$5,493	$14,667	$5,713	$15,253	4.0%	4.0%
North Dakota State University	$7,201	$19,227	$7,957	$11,936	10.5%	(37.9%)
University of North Dakota	$6,946	$18,546	$7,224	$19,288	4.0%	4.0%

Resident tuition rate increases at Bismarck State College and North Dakota State University exceeded the 4 percent maximum increase allowed by Senate Bill No. 2003 (2007); however, the increased tuition rates at the two institutions include the consolidation of certain existing fees into the tuition rates. Nonresident tuition rates at Bismarck State College and North Dakota State University were reduced in response to the new tuition model principles approved by the State Board of Higher Education. Bismarck State College and North Dakota State University reduced nonresident tuition rates to 1.5 times the resident tuition rate from 2.67 times the resident tuition rate.

Tuition Waivers

The University System reported tuition waivers totaled $31.8 million in the 2016-17 academic year, an increase from the $31.5 million of tuition waivers provided in the 2015-16 academic year. There was an increase in SBHE policy required waivers and a corresponding decrease in campus discretionary waivers because the board adopted a systemwide policy regarding employee dependent waivers, which were previously awarded at the discretion of the individual campuses. Tuition waivers by campus ranged from $85,182 at Dakota College at Bottineau to $19 million at North Dakota State University in the 2016-17 academic year. The University System reported most campus discretionary waivers were for graduate assistants.

Tuition waivers granted during the 2016-17 academic year are identified in the following schedule:

Institution	Statutory	State Board of Higher Education Policy	Institution Discretionary	Total
Bismarck State College	$70,922	$54,316	$89,601	$214,839
Dakota College at Bottineau	1,156	1,301	82,725	85,182
Lake Region State College	21,086	25,854	218,262	265,202
North Dakota State College of Science	63,431	59,747	26,531	149,709
Williston State College	1,388	14,834	97,640	113,862
Dickinson State University	20,831	116,303	428,475	565,609
Mayville State University	34,244	48,711	252,228	335,183
Minot State University	66,581	131,079	1,180,146	1,377,806
Valley City State University	13,160	80,134	314,971	408,265

Institution	Statutory	State Board of Higher Education Policy	Institution Discretionary	Total
North Dakota State University	434,998	1,358,190	17,210,181	19,003,369
University of North Dakota	218,364	1,221,440	7,879,016	9,318,820
Total	$946,161	$3,111,909	$27,779,776	$31,837,846

Room and Board

The University System reported room and board rates at research and 4-year campuses are lower than regional and contiguous states' averages and the room and board rates at 2-year campuses are higher than the regional and contiguous states' averages.

The University System reported campuses often have more room and board revenues than expenditures to save money for capital improvements. Revenues and expenses relating to dining services and residence halls are identified in the following schedule:

Institution	Fall 2017 Semester			
	Dining Services Revenue[1]	Dining Services Expenses[1]	Residence Hall Revenue	Residence Hall Expenses
Bismarck State College	$791,050	$805,850	$1,271,400	$1,107,300
Dakota College at Bottineau	357,556	308,078	454,919	389,790
Lake Region State College	362,014	359,257	238,298	165,986
North Dakota State College of Science	1,471,894	962,796	1,658,226	1,569,102
Williston State College	472,459	468,385	765,267	865,801
Dickinson State University	1,109,184	965,562	220,487	265,109
Mayville State University	419,860	405,780	730,101	568,244
Minot State University	959,606	723,660	690,855	838,751
Valley City State University	1,376,795	1,200,297	1,201,279	1,237,329
North Dakota State University	8,024,929	6,268,484	9,456,281	4,879,274
University of North Dakota	10,332,983	8,674,908	8,953,014	5,869,998
Total	$25,678,330	$21,143,057	$25,640,127	$17,756,684

[1]Dining services revenue and expense amounts for Bismarck State College and Dakota College at Bottineau represent half of the total amounts reported for fiscal year 2018. The remaining campuses reported dining services revenue and expense amounts for the fall 2017 semester only.

Campus Debt

The University System reported campus long-term debt ranged from approximately $26,000 at Dickinson State University to $115.76 million at North Dakota State University. Total long-term debt by campus is identified in the following schedule (amounts in millions):

Institution	June 30, 2015	June 30, 2016	June 30, 2017
Bismarck State College	$12.62	$11.96	$11.14
Dakota College at Bottineau	0.04	0.06	0.07
Lake Region State College	4.53	4.16	3.79
North Dakota State College of Science	8.54	8.42	8.09
Williston State College	11.76	11.37	10.95
Dickinson State University	0.06	0.04	0.03
Mayville State University	10.12	9.44	8.58
Minot State University	16.70	12.88	12.56
Valley City State University	6.02	5.87	9.83
North Dakota State University	123.59	120.50	115.76
University of North Dakota	118.73	117.44	114.84
Total	$312.71	$302.14	$295.64

Campus Financial Ratios

The University System reported higher education institutions use a composite financial index (CFI) ratio to evaluate institution financial health. The CFI creates one overall measurement of financial health based on four core ratios, including the primary reserve ratio, net income ratio, viability ratio, and return on net assets ratio. The CFI ratio results must be viewed together over time, not individually, to evaluate institution financial health. The Higher Learning Commission uses the CFI ratio, excluding pension liability and expense, to review institution financial health. A CFI ratio below 1.0 for two or more consecutive years may result in a financial panel review by the Higher Learning Commission. University System campus CFI ratios, excluding pension liability and expense, are identified in the following schedule:

Institution	2015	2016	2017
Bismarck State College	2.44	0.56	1.23
Dakota College at Bottineau	6.12	4.05	7.53
Lake Region State College	4.20	3.30	4.11
North Dakota State College of Science	3.98	4.08	5.50
Williston State College	4.47	2.49	3.50
Dickinson State University	2.01	4.26	3.63
Mayville State University	2.46	1.83	2.61
Minot State University	2.70	2.23	1.94
Valley City State University	3.35	3.57	4.40
North Dakota State University	3.59	3.01	2.69
University of North Dakota	4.12	3.62	3.95

Bismarck State College was the only campus to have a CFI ratio below 1.0 between fiscal year 2015 and fiscal year 2017; however, because the ratio was only below 1.0 for 1 year, a financial panel review would not have been conducted by the Higher Learning Commission.

University System institutions set aside unrestricted appropriated funds as undesignated reserves for sudden revenue shortfalls or unexpected expenses and designated reserves for future programs, technology, strategic planning initiatives, and other needs. State Board of Higher Education Policy 810.1 provides institutions should seek to maintain an undesignated appropriated reserve balance of between 5 and 7 percent of the previous fiscal years' actual general fund and net tuition revenue. The University System reported UND's undesignated appropriated reserves ($2.633 million) were below the level considered acceptable by SBHE.

Other Information Received

University System Space Utilization

The committee received updates regarding University System campus space utilization. The University System reported the criteria for determining space utilization includes room schedules and density. Room scheduling is the amount of time classrooms and laboratories are being used. Room density is the number of students occupying the available student space in each room compared to total capacity. The utilization rate is calculated by multiplying its scheduling rate times its density rate. The space utilization goal is for each classroom to be used at least 30 hours per week with an occupancy rate of at least 80 percent of capacity. The space utilization goal for laboratories is for each laboratory to be used at least 20 hours per week with an occupancy rate of at least 75 percent of capacity.

The University System reported University System institutions generally have below average space utilization rates. Utilization rates of classrooms at institutions range from 34 to 80 percent while the utilization rates of laboratories at institutions range from 37 to 108 percent.

Student Financial Assistance Programs

The committee received information regarding various state student financial assistance programs. The committee reviewed the following schedule which provides details regarding the programs:

Program	Description	Award Amount	2017-19 Biennium General Fund Appropriations
Student financial assistance grants	Needs-based grants awarded to students based on free application for federal student aid (FAFSA) information	Maximum grant of $975 per semester	$21,917,306
Scholars program	Scholarships awarded to the top-ranked high school graduates based on ACT Aspire scores	Full amount of tuition	$1,807,115
Academic and CTE scholarship program	Scholarships awarded to resident students who achieve certain academic standards in high school	$750 per semester	$12,016,749
Native American scholarship program	Merit or needs-based scholarships awarded to students who are enrolled members of a federally recognized Indian tribe	Up to $2,000 per academic year	$555,323
Professional student exchange program	Secures admission opportunities and reduces tuition costs for North Dakota students who enroll in veterinary medicine, dentistry, and optometry programs at certain out-of-state institutions	The amount of tuition reduced varies by program	$3,234,035

Program	Description	Award Amount	2017-19 Biennium General Fund Appropriations
Education incentive programs	Provides student loan forgiveness through the teacher shortage loan forgiveness program and science, technology, engineering, and mathematics (STEM) occupations loan forgiveness program	Teacher shortage - Up to $6,500 of student loan repayment per year, up to a maximum of 4 years STEM - $1,500 of student loan repayment per year, up to a maximum of 4 years	$2,863,393

The University System reported that in addition to the state financial assistance programs, there are several institutional scholarship programs that provide student financial assistance. Funding for most of the scholarships are provided by foundations or donors for various purposes, such as athletics or fine arts scholarships. Approximately $29.4 million of institutional scholarships were awarded in the 2016-17 academic year.

Higher Education Challenge Grant Program

The committee received information regarding the higher education challenge grant program. The program is used to provide grants to University System institutions to match private donations. The 2017 Legislative Assembly appropriated $2 million of one-time funding from the general fund for the grant program during the 2017-19 biennium. Of the funding appropriated, $200,000 was designated to be available to each institution, excluding Dickinson State University. The University System reported of the $2 million available for higher education challenge grants, approximately $1.2 million had been awarded through July 2018. The University System reported 99 percent of the $1.2 million awarded to campuses is for student scholarships.

Other Information Received

The committee also received information regarding:

- Campus and University System strategic plans.
- Enrollment.
- Retention and completion.
- Distance education.
- State workforce issues.
- University System institution research activities.
- State and national trends in higher education.
- Open educational resources.
- FAFSA.
- State funding for University System extraordinary repairs.

During the interim, the committee held meetings on the campuses of several University System institutions, received updates regarding unique issues affecting the campuses, and conducted tours of selected campus buildings.

Committee Considerations

The committee, through the Legislative Management Chairman, forwarded certain committee recommendations to SBHE for consideration by the board. Recommendations to SBHE include:

1. Consider implementation of a direct admissions program.
2. Consider studying to determine whether student achievement measure (SAM) retention and completion data is more appropriate for University System institutions than integrated postsecondary education data system (IPEDS) data.
3. Consider reviewing distance education programs provided by University System institutions from a systemwide perspective.

Committee Recommendations

The committee recommends the following bill drafts:

1. House Bill No. 1029 to create a higher education funding formula review committee to study the funding formula during the 2019-20 interim.

2. House Bill No. 1030 to extend the expiration date of Section 15-18.2-06, which establishes a minimum amount payable to an institution through the higher education funding formula, through June 30, 2021.
3. House Bill No. 1031 to increase the maximum grant award and funding available for the student financial assistance grant program.

The committee made certain recommendations to the 2019 Legislative Assembly without bill drafts, including:

1. Continue the higher education challenge matching grant program.
2. Continue the requirement for $2 of matching funds from operations or other sources for each $1 of extraordinary repairs funding used for a project.

NORTH DAKOTA CAREER AND TECHNICAL EDUCATION SCHOLARSHIPS AND ACADEMIC SCHOLARSHIPS

The 2009 Legislative Assembly created the CTE and academic scholarship programs. Eligibility criteria for the scholarship programs, which are in Chapter 15.1-21, were adjusted by the Legislative Assembly in 2011, 2013, 2015, and 2017. The eligibility requirements require a student to be a resident of the state and meet the following program requirements for the scholarships:

Career and Technical Education Scholarship	Academic Scholarship
Complete 4 units of English language arts	Complete 4 units of English language arts
Complete 3 units of mathematics, including 1 unit of Algebra II and 2 units of other mathematics	Complete 1 unit of Algebra II and 1 unit of mathematics for which Algebra II is a prerequisite
Complete 3 units of science	Complete 3 units of science
	Complete 3 units of social studies
Complete 1 unit of physical education or .5 unit of physical education and .5 unit of health	Complete 1 unit of physical education or .5 unit of physical education and .5 unit of health
Complete 2 units of a coordinated study plan as recommended by the Department of Career and Technical Education	Complete 2 units of the same foreign language, the same Native American language, American sign language, or CTE from a coordinated study plan approved by the Superintendent of Public Instruction
Complete 1 unit selected from foreign language, Native American language, American sign language, fine arts, or CTE	Complete 1 unit selected from foreign language, Native American language, American sign language, fine arts, or CTE
Complete 5 additional units, 2 of which must be in the area of CTE	Complete any 5 additional units
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 .5 unit required for the scholarship	Obtain a grade of at least "C" in each unit or .5 unit required for the scholarship
Receive a composite score of at least 24 on the ACT Aspire or a score of at least 5 on each of 3 WorkKeys assessments	Receive a composite score of at least 24 on the ACT
	Fulfill 1 unit required for the scholarship through an advanced placement course or fulfill .5 unit required for the scholarship through a dual-credit course

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 6 years following the student's graduation from high school.

The 2017-19 biennium legislative appropriation provides $12,016,749 from the general fund for the program, a decrease of $1,117,347 from the 2015-17 biennium legislative appropriation. Section 15-10-59 requires SBHE to provide an annual report to the Legislative Management 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 a report to the committee regarding the academic and CTE scholarship programs. The University System reported of the 7,752 high school seniors in the state who graduated in 2017, a total of 1,772, or 23 percent, qualified to receive an academic or CTE scholarship. Since the program began in 2010, there have been 63,958 high school graduates in the state and 12,351, or 19 percent of those graduates were eligible to receive an academic or CTE scholarship. Of the 12,351 eligible students, 7,760 students qualified for an academic scholarship and 4,591 students qualified for a CTE scholarship.

The University System reported a total of 4,926 students received an academic or CTE scholarship during the fall 2017 semester as follows:

	Type of Institution Attended by Scholarship Recipients (Fall 2017 Semester)				
	2-Year Public or Tribal Institution	4-Year Public Institution	Public Research Institution	Private Institution	Total
Academic scholarship recipients	161	307	2,303	347	3,118
CTE scholarship recipients	379	352	904	173	1,808
Total	540	659	3,207	520	4,926

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES ADVISORY COUNCIL

The UND School of Medicine and Health Sciences Advisory Council consists of 16 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, SBHE, State Department of Health, North Dakota Medical Association, North Dakota Hospital Association, the Department of Veterans' Affairs hospital in Fargo, the North Dakota Center for Nursing, the UND Center for Rural Health, and the Dean of the School of Medicine and Health Sciences.

Section 15-52-04 requires the UND School of Medicine and Health Sciences Advisory Council to provide a biennial report to the Legislative 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. 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 UND School of Medicine and Health Sciences reported it has implemented the health care workforce initiative. The initiative includes the following four major initiative areas:

- Reduce disease burden to lower the demand for health care services and related costs;
- Train more physicians and health care providers by increasing medical and health science class sizes and expanding residency programs;
- Retain more health care providers in the state through programs, such as the RuralMed scholarship program; and
- Improve the efficiency of the health care delivery system by training health care providers in interprofessional health care teams and by the use of learning communities.

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.

To qualify for a grant, a qualified institution must submit an application to SBHE, which documents the enrollment status of each student for whom financial assistance is sought. If an application is approved, SBHE is to distribute an annual payment to the institution for each nonbeneficiary student enrolled at the institution. The amount of payment is to be equal to the per student payment provided to institutions under the federal Tribally Controlled Colleges and Universities Assistance Act of 1978 or a prorated amount if funding is limited.

Each tribal college receiving a grant under Chapter 15-70 is to submit a report to the Legislative Council detailing the expenditures of the grant funds received by the institution. Additionally, each college is to submit a copy of the institution's latest audit report and documentation of the enrollment status of each student for whom financial assistance is requested. Any institution that fails to meet the reporting requirements is ineligible to receive future grants until the required information is submitted.

The following table details legislative appropriations for grants to tribally controlled community colleges.

Biennium	General Fund	Permanent Oil Tax Trust Fund	Student Loan Trust Fund
2007-09		$700,000	
2009-11		$700,000	
2011-13	$1,000,000		

Biennium	General Fund	Permanent Oil Tax Trust Fund	Student Loan Trust Fund
2013-15	$1,000,000		
2015-17	$500,000		$500,000
2017-19	$100,000		$500,000

Report

Representatives of the University System provided a report to the committee regarding the allocation of tribal college assistance grants. The University System reported $3,916.45 of grant funding was awarded per FTE nonbeneficiary student during the 2017-18 academic year. The committee reviewed the following schedule detailing the allocation of grant funding during the 2017-18 academic year:

Tribal College Assistance Grants - 2017-18 Academic Year			
Institution	Headcount of Nonbeneficiary Students	FTE Enrollment of Nonbeneficiary Students	Grant Funds Provided
Cankdeska Cikana Community College	16	9.5	$37,206
Fort Berthold Community College	27	13.2	51,697
Sitting Bull College	12	6.9	27,024
Turtle Mountain Community College	27	23.6	92,428
United Tribes Technical College	36	23.4	91,645
Total	118	76.6	$300,000

TRANSFERS BETWEEN LINE ITEMS

Section 20 of Senate Bill No. 2003 (2017) requires SBHE to provide a report regarding the transfer of appropriation authority from the operations line item to the capital assets line item by University System institutions.

Report

The University System reported the North Dakota State College of Science ($152,000), Bismarck State College ($124,374), and Lake Region State College ($23,000) each transferred appropriation authority from the operations line item to the capital assets line item for extraordinary repairs matching funds, pursuant to Section 28 of Senate Bill No. 2003 (2017). Section 28 requires institutions to provide $2 of matching funds from operations or other sources for each $1 of appropriated extraordinary repairs funding used for a project. Lake Region State College transferred an additional $12,000 from the operations line item to the capital assets line item to purchase a storage shed.

RESEARCH NETWORK COLLABORATION

Section 33 of Senate Bill No. 2003 (2017) requires SBHE to provide a report regarding the status of efforts to collaborate with Minnesota entities for research network purposes. The University System has utilized the Northern Tier Network to collaborate with other states for research network purposes.

Northern Tier Network

The Northern Tier Network is an ultra high-speed regional network that supports research and education across Alaska, Idaho, Iowa, Michigan, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Washington, Wisconsin, and Wyoming. In North Dakota, this high-speed network depends upon the state's government and education network for institutional connectivity and is operated through contracts with private telecommunications companies such as AT&T and Midcontinent Communications and higher education service providers, such as Broadband Optical Research, Education and Sciences Network.

Planning for the Northern Tier Network began in 2003. One-time funding provided for the North Dakota portion of the network included $3.25 million in federal funds, $2.77 million in state funding, and $2.1 million from the National Science Foundation. In addition, the Northern Tier Network Consortium members of Wisconsin, Minnesota, North Dakota, Montana, and Washington were partners in a $62.5 million grant. Funding for North Dakota's continued participation in the Northern Tier Network has been included in the University System's budget. In the 2015-17 biennium, Northern Tier Network costs totaled $2.36 million. The University System reported to the 2017 Legislative Assembly that Montana had ended its participation in the Northern Tier Network.

Report

The University System reported meetings were held with the University of Minnesota to discuss potential research network cooperation. However, the University System determined it would not collaborate with Minnesota to improve research network access and performance. The University System office is facilitating the study of existing research networks and advanced research computing centers. The University System stated the objectives of the study will help determine how to sustain and grow resources for North Dakota's research universities.

UNIVERSITY SYSTEM INCONSISTENCIES

Section 42 of House Bill No. 1003 (2015) required SBHE to evaluate the following data inconsistency issues at institutions and entities under its control and develop policies and procedures to correct the inconsistencies:

1. Lack of integration of personal and demographic information among computer systems;
2. Lack of use of standard chart of accounts for financial reporting and standard department budget table deduction and tax override flags;
3. Absence of standard business processes for recording mandatory fees and for changing payroll funding source information;
4. Inconsistent methods and procedures at institutions for recording high school completions, identifying student cohorts for reporting purposes, and classifying agency funds;
5. Inconsistent practices and policies at institutions for awarding tuition waivers, admitting students, using purchasing cards, charging tuition and fees, and accruing of faculty sick leave;
6. Inconsistent coding and naming for bad debt expense and journal entries;
7. Use of shadow accounting systems for reporting purposes; and
8. Inconsistent definitions for a distance education student, a resident student for tuition purposes, and a full-time student for federal tax purposes.

The State Board of Higher Education reported to the Appropriations Committees of the 2017 Legislative Assembly regarding the status of the inconsistencies, some of which were unresolved. Section 37 of Senate Bill No. 2003 (2017) requires SBHE to provide a report to the Legislative Management regarding the status of inconsistencies in employee classifications and human resources reporting, employee leave policies, practices for awarding tuition waivers, and practices regarding the charging of student fees, including policies and procedures being developed to address the inconsistencies.

Report

Employee Classifications and Human Resources Reporting

The University System reported its Human Resource Council formed a taskforce in the spring of 2017 to study human resource inconsistencies. The State Board of Higher Education approved maintaining the University System employee broadband policy for employee classifications in May 2018. The board also approved the creation of standard systemwide human resource reports by the Human Resource Council.

Employee Leave Policies

The University System reported SBHE reviewed campus employee leave practices and did not approve a systemwide employee leave policy. Therefore, existing institutional policies will continue.

Tuition Waiver Awarding

The University System reported SBHE modified its policy relating to tuition waivers in April 2018 and required the development of an institutional data waiver form. The University System reported new tuition models being implemented by University System campuses in 2018 and 2019 will decrease the volume of tuition waivers.

Charging of Student Fees

The University System reported the new tuition models being implemented by University System campuses in 2018 and 2019 are significantly reducing the number of student fees. The University System reported many fees are being merged into the campus tuition rates and SBHE policy requires board approval before any new course or program fees may be established.

EMPLOYEE POSITION REDUCTIONS

The University System is authorized 6,767.76 FTE positions for the 2017-19 biennium, 4,337.41 FTE positions more than the 2015-17 biennium authorized level. Section 38 of Senate Bill No. 2003 (2017) requires SBHE to provide a report to the Legislative Management regarding the total number of employee positions reduced at each institution, the number of administrative positions reduced at each institution, and whether any former administrative staff employees are still employed by the institution at a different position.

In response to the 2015-17 biennium general fund budget reductions approved by the Legislative Assembly during the August 2016 special legislative session and the 90 percent 2017-19 biennium budgets requested by Governor Dalrymple, the University System made a number of FTE position reductions; however, the University System budget

for the 2017-19 biennium recognizes all FTE positions rather than only those supported by the general fund. The following schedule summarizes the FTE position changes by campus.

Institution/Agency	2015-17 Biennium FTE Positions Appropriated	FTE Reductions		Other FTE Adjustments[1]	2017-19 Biennium FTE Positions Appropriated
		Faculty	Non-Faculty		
University System office	104.39		(19.00)	64.01	149.40
Bismarck State College	133.53	(10.00)	(9.00)	243.82	358.35
Lake Region State College	50.19	(2.50)	(7.50)	89.42	129.61
Williston State College	49.96	(12.50)	(7.40)	70.69	100.75
University of North Dakota	630.20	(89.50)	(74.00)	1,751.37	2,218.07
UND School of Medicine and Health Sciences	184.58	(14.00)	(14.00)	279.17	435.75
North Dakota State University	537.10	(69.90)	(25.10)	1,453.56	1,895.66
North Dakota State College of Science	168.30	(6.00)	(31.00)	213.74	345.04
Dickinson State University	120.26	(27.24)	(27.26)	103.14	168.90
Mayville State University	66.23	(7.00)	(3.33)	154.63	210.53
Minot State University	204.10	(15.50)	(8.70)	261.75	441.65
Valley City State University	105.59	(5.16)	(9.10)	111.42	202.75
Dakota College at Bottineau	46.96	(3.00)	(5.50)	45.84	84.30
Forest Service	28.96		(2.00)	0.04	27.00
Total	2,430.35	(262.30)	(242.89)	4,842.60	6,767.76

[1]These adjustments include the recognition of nongeneral fund FTE positions which were not recognized prior to the 2017-19 biennium.

Report

The University System reported institutions eliminated 661.5 FTE positions between January 1, 2016, and December 31, 2017, resulting in a cost savings of $90.2 million for the 2017-19 biennium. The University System reported institution buyout costs relating to the employee position reductions totaled approximately $7.9 million. The following schedules identify FTE reductions by campus:

Job Band Group	Institution					
	Bismarck State College	Lake Region State College	Williston State College	University of North Dakota	School of Medicine and Health Sciences	North Dakota State University
Executive/Administrative	1.00	1.00	1.00	6.00	0.00	6.00
Administrative/Managerial	1.00	0.00	2.00	5.00	1.00	2.00
Academic	20.00	6.40	10.00	72.00	10.00	70.00
Professional	12.00	4.50	10.00	66.00	3.00	39.00
Technical/Paraprofessional	3.00	1.00	1.00	26.00	1.00	19.00
Office Support	9.00	2.00	0.00	32.00	5.00	18.00
Crafts/Trades	2.00	0.00	0.00	9.00	0.00	2.00
Services	4.00	1.00	1.00	15.00	0.00	2.00
Total FTE positions eliminated	52.00	15.90	25.00	231.00	20.00	158.00
Biennium cost-savings	$6,753,124	$1,075,133	$2,964,790	$35,663,750	$5,692,991	$18,225,736

Job Band Group	Institution						
	State College of Science	Dickinson State University	Mayville State University	Minot State University	Valley City State University	Dakota College at Bottineau	Total
Executive/Administrative	2.00	2.00	0.00	3.00	0.00	0.00	22.00
Administrative/Managerial	3.00	1.00	0.00	1.00	2.10	1.00	19.10
Academic	16.00	9.00	7.00	24.00	6.00	4.00	254.40
Professional	6.00	7.00	1.50	2.00	3.50	5.00	159.50
Technical/Paraprofessional	3.00	0.00	1.00	8.00	0.50	0.00	63.50
Office Support	5.00	1.00	1.00	7.00	3.00	2.00	85.00
Crafts/Trades	5.00	0.00	0.00	1.00	1.00	0.00	20.00
Services	3.00	0.00	1.00	8.00	1.00	2.00	38.00
Total FTE positions eliminated	43.00	20.00	11.50	54.00	17.10	14.00	661.50
Biennium cost-savings	$6,035,055	$2,345,190	$1,480,175	$7,112,535	$1,502,581	$1,312,952	$90,164,012

The schedule below identifies the systemwide percentage distribution of FTE positions, reductions, and projected savings.

Job Band Group	January 1, 2016, FTE Position Distribution	Distribution of FTE Position Reductions	Distribution of Projected Cost-Savings
Executive/Administrative	3%	4%	8%
Administrative/Managerial	2%	3%	4%
Academic	43%	38%	41%
Professional	23%	25%	24%
Technical/Paraprofessional	10%	9%	7%
Office Support	8%	13%	9%
Crafts/Trades	3%	3%	3%
Services	8%	6%	4%

HUMAN SERVICES COMMITTEE

The Human Services Committee was assigned the following responsibilities:

- Section 34 of House Bill No. 1012 (2017) directed a study of public human services.
- Section 12 of Senate Bill No. 2015 (2017) directed a study of the Tompkins Rehabilitation and Corrections Center (TRCC).
- House Bill No. 1427 (2017), as revised by the Legislative Management, directed a study of refugee resettlement.

The Legislative Management delegated to the committee the responsibility to:

- Receive annual reports from the Autism Spectrum Disorder Task Force pursuant to North Dakota Century Code Section 50-06-32.
- Receive a report from the Department of Human Services (DHS) regarding the autism spectrum disorder program pilot project pursuant to Section 50-06-32.1.
- Receive annual reports from DHS 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 DHS before August 1 of each even-numbered year regarding provider reimbursement rates under the medical assistance expansion program pursuant to Section 38 of House Bill No. 1012 (2017).
- Receive a report from DHS pursuant to Section 3 of House Bill No. 1038 (2017) regarding the levels of funding provided for and spent on nursing home services and home- and community-based services by program during the 2015-17 and 2017-19 bienniums. The department also was to provide recommendation on options to include the number and level of services and funding provided for home- and community-based services for the 2019-21 biennium.
- Receive a report from DHS before August 1, 2018, regarding the outcome of the Medicaid fraud control unit feasibility and desirability study pursuant to Section 1 of House Bill No. 1226 (2017).
- Receive a report from DHS before April 1, 2018, on the outcome of the Medicaid waiver study pursuant to Section 2 of Senate Bill No. 2041 (2017).

Committee members were Representatives Kathy Hogan (Chairman), Bert Anderson, Pamela Anderson, Chuck Damschen, Daniel Johnston, Dwight Kiefert, Christopher D. Olson, Mary Schneider, Wayne A. Trottier, and Greg Westlind and Senators Howard C. Anderson, Jr., David A. Clemens, Robert Erbele, David Hogue, Oley Larsen, Judy Lee, and Tim Mathern.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

STUDY OF PUBLIC HUMAN SERVICES

Section 34 of House Bill No. 1012 (2017) directed a comprehensive study of public human services. The study was to include:

- A review of the continuum of services for each population served, the delivery method for those services, and the efficiency and effectiveness of the services;
- The involvement of federal, state, and local governments and for-profit and nonprofit entities in the provision and funding of services;
- An analysis of the funding levels for the programs and services included in the delivery system;
- Consideration of the appropriate role for each of the entities involved in the delivery system; and
- The development of a comprehensive master structure for the system.

Previous Studies

1985-86 Study of the Delivery of Human Services - Dawes Report

The 1985-86 interim Budget Committee on Human Services contracted with Dr. Kenneth J. Dawes, University of North Dakota, to conduct an in-depth survey of the programs, staff, and structure of DHS. Dr. Dawes identified the

strengths and weaknesses of the human services delivery system and provided recommendations to enhance the delivery of human services in the state.

1990 Study of the Human Services Delivery System

During the 1989-90 interim, the Budget Committees on Long-Term Care and Human Services conducted a joint review of alternatives for restructuring the human service delivery system in North Dakota. The committees were assigned this responsibility after the December 1989 tax referrals and the potential impacts on human service programs of budget reductions resulting from the tax referrals. The committees reviewed social service responsibilities, programs, and funding in North Dakota, Minnesota, Montana, South Dakota, and Iowa.

The committee recommended, and the 1991 Legislative Assembly passed, Senate Bill No. 2033 that created Section 50-01.1-02.1 to provide financial incentives for the creation of multicounty social service districts. The bill included a $200,000 appropriation from the state aid distribution fund for the 1991-93 biennium. The financial incentives were to be based on achieved economies of scale, adherence to caseload standards, reduced administrative costs, specialized staff qualifications, and quality of services provided. The incentives were limited to a 6-year period. The $200,000 appropriation was not spent and financial incentives were not provided to establish any multicounty districts.

1991-92 Update of Dawes Recommendations

The 1991-92 interim Budget Committee on Human Services contracted with Dr. Dawes for a report on the status of the 1987 legislative recommendations regarding DHS. Dr. Dawes provided the committee a historical review of the development of social services in North Dakota and of DHS, conducted a review of the status of recommendations contained in the 1987 report, and conducted interviews of personnel of DHS and county social service agencies. Dr. Dawes provided several recommendations to continue to improve the delivery of human services in the state.

The committee, as a result of Dr. Dawes' study and a State Auditor's office performance review of DHS, recommended 1993 Senate Concurrent Resolution No. 4004 encouraging improvements by DHS.

1995-96 Budget Committee on Human Services Study

The interim Budget Committee on Human Services studied the responsibilities of county social service agencies, regional human service centers, and DHS regarding economic assistance programs. The committee received detailed information regarding central office, human service center, and county social service administrative costs and caseloads for calendar year 1994. The committee recommended, and the 1997 Legislative Assembly passed, House Bill No. 1041 (known as the "SWAP" agreement) requiring counties, effective January 1, 1998, to assume the financial responsibility for the cost of administration of certain economic assistance programs and requiring the state to assume complete financial responsibility for the nonfederal share of the grant costs of medical assistance and basic care and to contribute additional support of administrative costs for counties with Indian land. The state assumed financial responsibility for grant programs, including temporary assistance for needy families, basic care, child care assistance, and Medicaid.

1997-98 Budget Committee on Human Services Study

The 1997-98 interim Budget Committee on Human Services conducted a study of DHS in which Public Administration Services was selected to study the department's organizational structure. The Public Administration Services' study identified opportunities for improvements for the department and provided 18 recommendations relating to DHS' administrative structure and budget presentation methods. The 1997-98 interim committee recommended, and the 1999 Legislative Assembly passed, Senate Concurrent Resolution No. 4003, which urged DHS to implement the recommendations resulting from the Public Administration Services' study.

2003-04 Study of Human Services Administrative Costs

The 2003-04 interim Budget Committee on Human Services studied the administrative costs of human services programs, including costs incurred by the DHS central office, human service centers, and county social services. The committee received and reviewed information regarding the administrative costs of various programs administered by the department. The committee also reviewed costs incurred by counties relating to the delivery of human service programs. The committee did not have any formal recommendations resulting from the study.

History of Human Services

County Authority and State Board of Public Welfare

In the 1860s, the territorial legislature authorized counties as overseers of the poor in their county and were permitted to generate revenue for such purpose. From 1913 to 1933, townships were also authorized to perform the duties of overseeing the poor. Counties continued to perform the overseer duties in unorganized townships and in organized townships that chose not to perform the duties.

In 1933 the Legislative Assembly created the State Board of Public Welfare and authorized the board to accept and disburse federal funds for human services. In 1935 the Legislative Assembly authorized counties to create county welfare

boards to accept funds from the State Board of Public Welfare to administer aid to the poor. From 1933 through 1981, the duties of the State Board of Public Welfare were adjusted to provide for the administration of new programs. In 1971 the name of the State Board of Public Welfare was changed to the Social Services Board of North Dakota.

Counties had a major role in the delivery of human services. In 1963 the Community Mental Health Act resulted in counties establishing community mental health centers. A board of directors was established for each center, which consisted of members appointed by the governing body of the political subdivision in which the center was located.

Statutory provisions also allowed local government entities to enter joint powers agreements to operate human service centers. The human service centers combined the services of social service centers and mental health centers in one location. The centers were under the general supervision of a local board of directors appointed by the local county commission and state social service board.

Creation of the Department of Human Services

The Department of Human Services was created in 1981 through the enactment of House Bill No. 1418. The bill created a new Department of Human Services which, on January 1, 1981, consolidated a number of agencies previously organized under several separate areas of state government. The department assumed the functions, duties, powers, and control of the following agencies:

1. The Social Services Board (including the regional human service centers);
2. The Governor's Council on Human Resources; and
3. Portions of the Department of Health (the Division of Mental Health and Retardation, including the State Hospital; the Division of Alcoholism and Drug Abuse; and the State Council on Developmental Disabilities).

The bill further provided the Executive Director of DHS, who is appointed by and serves at the pleasure of the Governor, is the administrative head of the department and provided for the structure of the new department. The 1981 legislation provided the department was to be divided into three sections--the State Hospital, the Office of Human Services, and the Office of Economic Assistance and County Administration. Contained within the Office of Human Services were the following divisions--developmental disabilities, mental health, social services (including an aging services unit and a children and family services unit), vocational rehabilitation, and alcohol and drug abuse. The Office of Economic Assistance and County Administration included the Public Assistance Division (including a food stamp unit, a housing assistance unit, an assistance payments unit, an energy assistance unit, and a child support unit) and a Medical Assistance Division.

Since DHS was created, the duties and responsibilities of the department have been adjusted multiple times, including the transfer of the administrative control of the Grafton State School (Life Skills and Transition Center) and San Haven from the Director of Institutions to DHS on July 1, 1989.

Current Structure of the Department of Human Services

Section 50-16-01.3 provides for the Governor to appoint an executive director to oversee the operations of DHS. The department is structured into various divisions with different responsibilities. The following is a summary of divisions within DHS:

Division/Area	Major Programs/Services
Administration/management	• Executive office; • Fiscal administration; • Human resources; • Information technology services; • Legal; and • Public information.
Aging Services	• Adult foster care licensing; • Dementia care; • Family caregiver support program; • Home- and community-based long-term care services paid for by Medicaid, service payments for elderly and disabled (SPED), and expanded SPED; • Long-term care ombudsman program; • Older Americans Act services; and • Vulnerable adult protective services.

Division/Area	Major Programs/Services
Behavioral Health	• Prevention and promotion projects, including Parents Listen, Educate, Ask, Discuss and statewide community prevention; • Gambler's Choice; • Robinson Recovery Center; • Substance use disorder voucher program; and • Brain injury supports.
Child Support	• Establishment of paternity, child support, and medical support; • Enforcement of support orders; • Parent locate services; and • Receipt and distribution of child support payments.
Children and Family Services	• Adoption; • Child protection; • Early childhood services, including child care licensing; • Family preservation services; and • Foster care and placement of children.
Developmental Disabilities	• Development disability home- and community-based Medicaid waivers services; • Early intervention; • Medicaid funding of intermediate care facility services for individuals with intellectual disabilities; • Provider licensing and regulation; and • Training and technical assistance.
Economic assistance	• Alternatives to abortion; • Basic care assistance eligibility; • Child care assistance; • Low-income home energy assistance; • Medicaid and children's health insurance program eligibility; • Supplemental nutrition assistance program; and • Temporary assistance for needy families.
Medical Services	• Assisted living facility licensing; • Basic care assistance funding; • Children with disabilities coverage; • Healthy Steps funding; • Money follows the person program; • Medicaid autism waiver; • Medicaid primary care provider program; • Medicaid coverage, ratesetting, and program integrity; • Medically fragile children coverage and children's hospice waiver coverage; • Program of all-inclusive care for the elderly; • Qualified service provider training; and • Workers with disabilities coverage program.
Vocational rehabilitation	• Centers for Independent Living funding; • Consultation services for businesses;

Division/Area	Major Programs/Services
	• Rehabilitation services to assist disabled people to become employed; • Vision services; and • Federally contracted disability determination services.
Field Services	• Regional human service centers Emergency services, including crisis lines and support, social and medical detoxification, and State Hospital admissions screening; Chronic disease management, including targeted case management, addiction counseling, psychotherapy, psychosocial rehabilitation, medication management, and housing services; and Special services, including intellectual disabilities case management, vocational rehabilitation, adult protective services, regional supervision of child welfare services, and court-ordered psychological assessment. • Life Skills and Transition Center Residential services and supported living arrangements in other communities for people with developmental disabilities; Vocational and outreach services; Independent supported living arrangement program; CARES Medical Clinic; and Intellectual disabilities behavioral health service. • State Hospital Inpatient services for adults with mental illness and substance use disorders whose needs exceed local resources; Psychiatric rehabilitation services for adults with persistent and serious mental illness; Transitional living services for adults with persistent and serious mental illness; Evaluation and treatment services for civilly committed sexually dangerous individuals; and Residential addiction treatment services provided by the TRCC through contract with the Department of Corrections and Rehabilitation (DOCR).

Department Funding and Full-Time Equivalent Positions

The 2017-19 biennium appropriations for DHS total $3,913,112,132, of which $1,339,231,350 is from the general fund. The schedule below provides information regarding funding for DHS since the 2009-11 biennium:

	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium	2017-19 Biennium
General fund	$650,645,814	$932,025,219	$1,171,116,129	$1,281,017,188	$1,339,231,350
Other funds	1,637,100,137	1,673,400,832	1,778,336,465	2,246,039,963	2,573,880,782
Total	$2,287,745,951	$2,605,426,051	$2,949,452,594	$3,527,057,151	$3,913,112,132

The schedule below details the full-time equivalent (FTE) positions authorized for DHS since the 2009-11 biennium:

	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium	2017-19 Biennium
FTE positions	2,216.88	2,189.35	2,201.08	2,211.08	2,162.23

Delivery of Services

Human service programs are delivered by a variety of methods. Counties are the first point of contact for individuals seeking economic assistance and family services programs. Services are provided directly by DHS, by the county, or by contracted private providers.

State Takeover of Human Services Costs

The Legislative Assembly has authorized several changes which resulted in the state paying certain social services costs rather than counties. In 1997 the counties assumed the cost of administering selected economic assistance programs in exchange for the state to pay for the direct programs costs. In 2007 the state assumed the costs of administering child support enforcement. In 2015 the state assumed costs of foster care and subsidized adoption assistance payments, medical assistance payments for therapeutic foster care services, SPED, county administrative costs for providing family preservation services, computer processing costs for the technical eligibility system, and the costs of electronic benefit transfers for the supplemental nutrition assistance program.

In 2017 the Legislative Assembly approved Senate Bill No. 2206 which created a 2-year pilot program for the state payment of county-funded economic assistance and social services costs (social services redesign pilot project). The bill also removed the authority of counties to levy a property tax for social services programs. The bill appropriated $160.7 million to DHS to pay county social services during calendar years 2018 and 2019 based on a formula using 2015 costs. As of August 2018, the estimate is that $156.4 million of the appropriation will be distributed to counties.

Social Services Redesign Project

The committee received information regarding the social services redesign project. The committee learned the project is the result of Senate Bill No. 2206, which requires DHS to develop a plan to implement a state-paid economic assistance and social service program. The project is using four teams to review service needs and provide recommendations--children and family services, economic assistance eligibility, adults (aging and developmental disabilities), and administrative. The teams include representation from various stakeholder groups, including counties.

The committee was informed several issues have been identified during project meetings. There are a number of services being provided which are based on structures that existed before the creation of DHS. Representatives of DHS also expressed concern that laws relating to a program may not align with best practices for serving individuals with needs.

The project committees will continue to meet and DHS will develop recommendations for the redesign of the social services system. The recommendations will be provided to the Legislative Assembly for its consideration. If approved, any changes to the design of the social services system will take several bienniums to implement.

Information presented to the committee indicated the project committees are reviewing options to reorganize the structure of human services delivery. One option is to use multicounty zones for the delivery of services. The zones would have advisory boards consisting of representatives of the areas being served. Transitioning to a zone delivery model for social services would adjust certain job responsibilities and reduce some administrative positions. Vacant positions could be reclassified to service delivery positions. Statutory changes may not be needed to establish social service delivery zones as DHS currently has the authority to establish multicounty social service districts.

Behavioral Health

The committee received information regarding DHS actions relating to behavioral health. The Department of Human Services contracted with the Human Services Research Institute for $160,000 to conduct a review of the state's behavioral health system. The goals of the study were to conduct an in-depth review of the state's behavioral health system; to analyze current utilization and expenditure patterns by payer source; to provide recommendations for enhancing the integration, cost-effectiveness and recovery orientation of the system to effectively meet community needs; and to establish strategies for implementing the recommendations. The study gathered data by reviewing existing reports and documents, by conducting stakeholder interviews, and by reviewing Medicaid claims and state service utilization data for behavioral health services.

The committee received the following study report recommendations and strategies:

Recommendation	Strategy
1. Develop a comprehensive implementation plan	1.1 Reconvene system stakeholders, including service users and their families 1.2 Form an oversight steering committee to coordinate with key stakeholder groups 1.3 Establish workgroups to address common themes identified in this report
2. Invest in prevention and early intervention	2.1 Prioritize and implement evidence-based social and emotional wellness initiatives 2.2 Expand existing substance use prevention efforts, restore funding for the Parents Listen, Educate, Ask, Discuss program 2.3 Build upon and expand current suicide prevention activities 2.4 Continue to address the needs of substance exposed newborns and their parents 2.5 Expand evidence-based services for first-episode psychosis
3. Ensure all North Dakotans have timely access to behavioral health services	3.1 Coordinate and streamline information on resources 3.2 Expand screening in social service systems and primary care 3.3 Ensure a continuum of timely and accessible crisis response services

Recommendation	Strategy
	3.4 Develop a strategy to remove barriers to services for persons with brain injury 3.5 Continue to invest in evidence-based harm-reduction approaches
4. Expand outpatient and community-based service array	4.1 Ensure access to needed coordination services 4.2 Continue to shift funding toward evidence-based and promising practices 4.3 Expand the continuum of substance use disorder treatment services for youth and adults 4.4 Support and coordinate efforts to enhance the availability of outpatient services in primary care 4.5 Address housing needs associated with behavioral health needs 4.6 Promote education and employment among behavioral health service users 4.7 Restore/enhance funding for recovery centers 4.8 Promote timely linkage to community-based services following a crisis 4.9 Examine community-based alternatives to behavioral health services currently provided in long-term care facilities
5. Enhance and streamline system of care for children and youth	5.1 Improve coordination between education, early childhood, and service systems 5.2 Expand targeted, proactive in-home supports for at-risk families 5.3 Develop a coordinated system to enhance treatment-related foster care capacity and cultural responsiveness 5.4 Prioritize residential treatment for those with significant/complex needs
6. Continue to implement and refine criminal justice strategy	6.1 Ensure collaboration and communication between systems 6.2 Promote behavioral health training among first responders and others 6.3 Review behavioral health treatment capacity in jails 6.4 Ensure Medicaid enrollment for individuals returning to the community
7. Engage in targeted efforts to recruit and retain competent behavioral health workforce	7.1 Establish a single entity for supporting workforce implementation 7.2 Develop a single database of statewide vacancies for behavioral health positions 7.3 Provide assistance for behavioral health students working in areas of need in the state 7.4 Raise awareness of student internships and rotations 7.5 Conduct comprehensive review of licensure requirements and reciprocity 7.6 Continue establishing training and credentialing program for peer services 7.7 Expand credentialing programs to prevention and rehabilitation practices 7.8 Support a robust peer workforce through training, professional development, and competitive wages
8. Expand the use of telebehavioral health	8.1 Support providers to secure necessary equipment/staff 8.2 Expand the availability of services for substance use disorders, children and youth, and American Indian populations 8.3 Increase types of services available 8.4 Develop clear, standardized regulatory guidelines
9. Ensure the system reflects values of person centeredness, cultural competence, and trauma-informed approaches	9.1 Promote shared decisionmaking 9.2 Promote mental health advance directives 9.3 Develop a statewide plan to enhance commitment to cultural competence 9.4 Identify cultural/language/service needs Ensure effective communication with individuals with limited 9.5 English proficiency 9.6 Implement additional training 9.7 Develop/promote safe spaces for LGBTQ individuals within the behavioral health system 9.8 Ensure a trauma-informed system 9.9 Promote organizational self-assessments

Recommendation	Strategy
10. Encourage and support the efforts of communities to promote high-quality services	10.1 Establish a state-level leadership position representing persons with lived experience 10.2 Strengthen advocacy 10.3 Support the development of and partnerships with peer-run organizations 10.4 Support community efforts to reduce stigma, discrimination, and marginalization 10.5 Provide and require coordinated behavioral health training among related service systems
11. Partner with tribal nations to increase health equity	Collaboration within and among tribal nations, and with state and local human service agencies
12. Diversify and enhance funding for behavioral health	12.1 Develop an organized system for identifying/responding to funding opportunities 12.2 Pursue 1915(i) Medicaid state plan amendments 12.3 Pursue options for financing peer support and community health workers 12.4 Sustain/expand voucher funding and other flexible funds for recovery supports 12.5 Enroll eligible service users in Medicaid 12.6 Join in federal efforts to ensure behavioral and physical health parity
13. Conduct ongoing, system-side data-driven monitoring of needs and access	13.1 Enhance and integrate provider data systems 13.2 Develop system metrics to monitor progress on key goals 13.3 Identify and target services to those with highest service costs

The committee was informed DHS is contracting with the Human Services Research Institute for $178,000 to begin implementing the recommendations. The Department of Human Services is in the drafting and planning stages and the implementation process is anticipated to be completed in June 2019.

The committee received updates on the free through recovery program which will provide behavioral health services to individuals in the criminal justice system. The mission of the program is to reduce recidivism by delivering high-quality community behavioral health services with effective supervision. The program will focus on addressing gaps in recovery services not currently being provided by public or private providers. Participating providers will be paid a base rate per participant, per month, for providing care coordination and recovery services. The program includes funding that will focus on addressing local community needs such as housing and transportation.

The committee received information regarding outcomes of the free through recovery program. From January 10, 2018, through April 18, 2018, there were 328 referrals to the program which resulted in 289 participants. Program providers began recording the following outcome metrics:

- Is the participant living in a residence that is supportive of their recovery;
- Is the participant actively seeking or participating in employment;
- Is the participant demonstrating effort to reduce their substance use or the harm associated with their use or improving their mental health functioning; and
- Did the participant avoid law enforcement involvement resulting in arrest, criminal charges, or probation violations?

In March 2018, 78 percent of program participants achieved at least three of the four outcome measurements. Approximately 22 percent of program participants achieved fewer than three of the measurement outcomes.

Other Information Received

The committee also received information regarding:

- Changes to the payment methodology for developmental disabilities services to allow individuals to request "outlier" funding to receive additional services.
- The implementation of legislation enacted by the 2017 Legislative Assembly which affects DHS.
- The status of the children's prevention and early intervention behavioral services pilot project.
- The activities of the children's behavioral health task force.
- The role of the State Department of Health in delivering behavioral health services.

Committee Recommendations

The committee recommends the following bill drafts:

- Senate Bill No. 2028 to provide a general fund appropriation of $600,000 to DHS for behavioral health prevention and early intervention services, of which DHS must allocate $300,000 for substance abuse prevention and early intervention services and the remaining $300,000 for other mental health prevention and early intervention efforts.
- Senate Bill No. 2029 to direct DHS to implement a community behavioral health program to provide services to individuals outside the correctional system who have serious behavioral health conditions. The bill provides a $7 million appropriation to DHS for the program, of which $5.25 million is from the general fund and $1.75 million is from other funds. The bill also authorizes 6 FTE positions for the program.
- Senate Bill No. 2030 to provide an appropriation of $408,000 from the general fund to DHS to coordinate the implementation of recommendations of the Human Services Research Institute's study of the state's behavioral health system. The bill also authorizes 1.5 FTE positions to coordinate the implementation of recommendations.
- Senate Bill No. 2031 to provide an appropriation to DHS for targeted case management. The bill appropriates $12,196,834 from the general fund and $12,196,834 from other funds and authorizes 1 FTE position.
- Senate Bill No. 2032 to implement a peer support services certification program within DHS. The bill appropriates $275,000 from the general fund and $275,000 from other funds, and authorizes 1 FTE position for the program.

STUDY OF THE TOMPKINS REHABILITATION AND CORRECTIONS CENTER

Section 12 of Senate Bill No. 2015 (2017) provided for a study of TRCC. The study was to review the operation, management, conditions, caseload, and physical plant of the center. The study also was to review the potential transition of the center, including the transfer of the building, employees, and supervision and management of all operations and caseload of the center from DHS and the State Hospital to DOCR.

Tompkins Rehabilitation and Corrections Center Overview

The Tompkins Rehabilitation and Corrections Center is located at the State Hospital and operated by DHS in collaboration with DOCR. The center, which began operations in 1999, has 60 beds for men and 30 beds for women. The center is a residential facility providing substance abuse treatment services 24 hours a day, 7 days a week.

The Department of Corrections and Rehabilitation contracts with the center to provide treatment to offenders with substance abuse issues. Programs at the center provide diagnosis, evaluation, and treatment planning. Individuals may receive group and individual therapy, cognitive restructuring, structured social environment therapy, and aftercare planning services.

Number of Individuals Served

The Tompkins Rehabilitation and Corrections Center program is a joint commission accredited residential addiction treatment program providing comprehensive services to high-risk individuals with substance use disorders. The program serves individuals who will soon be released from incarceration and have been identified as a high risk for recidivism.

The schedule below details the number of individuals served at the TRCC since state fiscal year 2014.

	Fiscal Year			
	2014	2015	2016	2017 (Estimated)
Individuals served	342	365	396	426

Facilities

The Tompkins Rehabilitation and Corrections Center program is located in two buildings on the State Hospital grounds. The men's program is located in the TRCC building which contains 34,660 square feet. The women's program is located in the New Horizons building. The New Horizons building, which consists of 75,485 square feet, also houses other State Hospital programming.

Shortly after the TRCC program began operations, a total of 90 residential beds were available. In 2015 DHS expanded the center to provide an additional 16 beds.

As part of the study, the committee conducted a tour of the TRCC program facilities.

Staff

The Tompkins Rehabilitation and Corrections Center program employs 49 staff members, which includes a program director, nursing staff supervisor, nursing staff, and rehabilitation staff. There are positions that provide services to the entire State Hospital that also provide services to the TRCC program, including security, records, admissions, medical, and administration.

Tompkins Rehabilitation and Corrections Center Program Budget and Contract Payments

The committee received the following schedule detailing the estimated amount of funding and FTE employees included in DHS's budget for the TRCC program since the 2013-15 biennium:

	2013-15 Biennium	2015-17 Biennium	2017-19 Biennium (Estimated)
Estimated TRCC program funding	$6,091,172	$8,582,804	$8,601,457
FTE employees	43.95	54.60	54.60

The committee received the following schedule detailing the current biennium budgeted expenses of the TRCC program:

Estimated Biennial Budget - Tompkins Rehabilitation and Corrections Center Program	
Salaries	$7,431,464
Operating	36,993
Medical, pharmacy, dental	304,000
Physical plant	55,000
Custodial	120,000
Chaplaincy	44,000
Other capital and maintenance	610,000
Total	$8,601,457

The source of funding for the TRCC program is contract payments from DOCR. The following schedule details contract payments and the number of beds provided through the TRCC program since the 2009-11 biennium:

Biennium	Contract Payments	Number of Beds
2009-11	$4,764,035	90
2011-13	$5,127,300	90
2013-15	$5,651,247	90
2015-17	$7,985,926	106[1]
2017-19	$8,607,462	106

[1]Sixteen beds were added in December 2015.

The contract payments do not include services provided directly to the program by DOCR which include laundry service, meal service, education services, and nonroutine medical services, and 4 FTE case and program management staff.

Recommendations for Program Changes

The committee was informed representatives of DHS, DOCR, and the Governor's office have been meeting to review potential changes to the TRCC program. A representative of the Governor's office reported to the committee the agencies have developed the following proposal for operational changes to the program:

- DOCR would utilize the TRCC building to provide 60 beds for substance abuse and mental health treatment of DOCR inmates. Treatment services would be provided by DOCR staff.
- The remaining 46 beds would be operated by DHS and be dedicated to intensive residential treatment services for individuals with mental health and substance abuse disorders. It is anticipated that most of the beds would be contracted on a per-diem basis to DOCR to treat individuals housed in DOCR facilities or individuals on probation resulting from substance-related offenses. Treatment services would be provided by DHS staff.

Representatives of DHS and DOCR also reviewed the following recommended changes to the treatment services of the program:

- Accept participants who have serious mental health conditions, have a more challenging transition process than the average prison resident, or are under community supervision and are having difficulty meeting the expectations of the supervision term due to behavioral health concerns;
- Provide individualized assessment and recovery support plans for participants who enter the program from community settings;
- Coordinate services with free through recovery program providers;
- Implement medication-assisted treatment;
- Emphasize emotion regulation skills; and
- Build import-model services for employment development and educational and leisure opportunities.

Representatives of DHS and DOCR anticipate any necessary funding adjustments needed to implement the recommended program changes will be included in each department's 2019-21 biennium budget request.

Committee Recommendations

The committee makes no recommendation regarding the study of the TRCC.

STUDY OF REFUGEE RESETTLEMENT

House Bill No. 1427 (2017) directed a study of the refugee resettlement process in the state. The scope of the study was revised by the Legislative Management to provide for a review of the impact of refugee resettlement on workforce, government services (particularly law enforcement), human services, education, and health care. The study was to include recommendations to improve or modify the resettlement process.

Previous Study

The 1995-96 interim Budget Committee on Human Services studied refugee resettlements in the state and the net fiscal effects of refugees and other limited English proficient or language minority students on school districts and the providers of social services. The committee received information regarding estimated costs to resettle refugees, the sources of funds for resettlement costs, support services for refugees, negative impacts of resettlement, and the costs to school districts for serving students with limited language proficiency.

The committee recommended Senate Bill No. 2055 (1997), which was approved by the Legislative Assembly, to provide school districts with additional payments for each student in the school district that had limited English proficiency.

Background

Federal Refugee Act of 1980

The federal Refugee Act of 1980 (Pub. L. 96-212), which became effective April 1, 1980, was an amendment to the earlier Immigration and Nationality Act and the Migration and Refugee Assistance Act. The Refugee Act of 1980 was enacted to provide a permanent and systematic procedure for the admission to the United States of refugees of special humanitarian concern to the United States and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted.

The Act defines a refugee as "any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

The main objectives of the Act were to:

- Create a new definition of refugee based on the definition created at the United Nations Convention and Protocol on the Status of Refugees;
- Establish the Office of United States Coordinator for Refugee Affairs and the Office of Refugee Resettlement (ORR); and
- Establish explicit procedures on how to deal with refugees in the United States by creating a uniform and effective resettlement and absorption policy.

The Refugee Act of 1980 requires the President, in consultation with the United States Congress, to determine the maximum number of refugees to be admitted to the country each year. The federal Bureau of Population, Refugees, and Migration (PRM) screens refugees to determine eligibility for resettlement in the United States. Once the PRM accepts a refugee for resettlement, it works with ORR, which is a division of the United States Department of Health and Human Services, and national volunteer agencies to provide services to the refugee in an American community. The Bureau of Population, Refugees, and Migration places refugees according to plans it develops with input from national volunteer agencies and state and local government representatives. The plans aim to avoid resettlement in areas already highly impacted by the presence of refugees to the extent practicable. When the PRM decides to place a refugee in a state, the bureau must consider the recommendations of the state regarding the appropriate community for placement. The ultimate decision regarding placement; however, is with the federal government.

State Refugee Resettlement Plan

The Refugee Act of 1980 requires each state to submit a refugee resettlement plan to ORR and obtain ORR's approval of the plan before the state may receive refugee resettlement assistance funds. When a state wishes to amend its plan, the Governor of the state must approve the amended plan and submit it to ORR for final approval. To receive

approval, a plan must include all the elements required under federal law, and the state must agree to comply with all federal laws, regulations, and official issuances of the Director of ORR. Since the enactment of the Refugee Act of 1980, DHS, in consultation with Lutheran Social Services of North Dakota, has prepared and submitted the state's refugee resettlement plan to ORR. In preparing the state plan, the department also receives information and recommendations from the local refugee advisory committees located in Fargo, Grand Forks, and Bismarck.

Refugee Resettlement Program

Information provided to the committee indicated there are three different types of programs utilized by states for refugee resettlement--state-administered programs, public-private partnerships, and the alternative Wilson-Fish program. North Dakota is 1 of 14 states that use the Wilson-Fish program for refugee resettlement. The Wilson-Fish program provides for ORR to contract with a nonprofit organization to provide refugee resettlement services. The program emphasizes early employment and economic self-sufficiency.

Section 50-06-01.4 assigns responsibility for refugee services to DHS. Until 2010, the department employed a part-time refugee coordinator and administered the Refugee Resettlement program. The department acted as a fiscal passthrough agent for federal refugee services funding and played a larger role overall in the state's involvement in refugee resettlement. In October 2010, as the result of a memorandum of understanding between the department and Lutheran Social Services, the department transitioned most refugee-related services to Lutheran Social Services. The decision to transition refugee resettlement services was an executive branch decision by the Governor. The transition shifted the responsibility for securing federal grant funding, providing services, and fulfilling required reporting requirements to Lutheran Social Services, the only federally recognized and approved refugee resettlement organization in the state.

As part of the transition, ORR required DHS to retain responsibility for the Unaccompanied Refugee Minor program, which provides foster care for federally designated refugee children, and the Refugee Medical Assistance program, which provides up to 8 months of medical assistance coverage for legally admitted refugees. These two programs are funded with federal funds.

Funding for Refugee Resettlement Program

Federal resettlement assistance to refugees is provided primarily through the state's Refugee Resettlement program, which is administered by Lutheran Social Services. The Refugee Resettlement program is 100 percent federally funded. The following schedule provides information regarding legislative appropriations for the Refugee Resettlement program from the 2009-11 biennium through the 2017-19 biennium.

	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium	2017-19 Biennium
Department of Human Services	$4,095,632	$2,731,279	$2,848,472	$4,206,208	$2,756,113

Number of Refugees Resettled

The following schedule provides a summary of the total refugees resettled into North Dakota for federal fiscal years 2003 through 2016:

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of annual refugee resettlements	111	223	225	182	202	403	438	470	354	555	449	590	506	558

The following schedule details the locations of refugee resettlements since federal fiscal year 1997:

Primary Refugee Arrivals to North Dakota					
		Percentage of Refugees Resettled by Location			
Federal Fiscal Years	Total Number of Refugees Resettled	Fargo/ West Fargo	Grand Forks	Bismarck	Main Ethnicities
1997-2001	2,646	80%	4%	16%	Bosnian, Somali
2002-2006	792	89%	11%	0%	Somali, Liberian
2007-2011	1,867	78%	20%	2%	Bhutanese, Iraqi
2012-2017	3,084	74%	20%	6%	Bhutanese, Iraqi, and Somali
Total 1997-2017	8,389	78%	14%	8%	

NOTE: Includes primary refugee arrivals only.

In federal fiscal year 2017, 95 percent of refugee individuals resettled in the state had family ties in their resettlement locations.

In the first 6 months of federal fiscal year 2018, 97 percent of the refugee individuals admitted had family ties in North Dakota and 70 percent were either women or children and had spent an average of 19.2 years in refugee camps before arrival. The refugees who were resettled identified themselves as Hindu/Buddhist/Kirat (49 percent), followed by Christians (39 percent), and Muslims (13 percent).

Programs Assisting Refugees

Economic Assistance Programs

The committee received the following information regarding the number of refugees utilizing DHS economic assistance programs and related expenditures:

Refugees Utilizing Economic Assistance Programs			
	State Fiscal Year 2015	**State Fiscal Year 2016**	**State Fiscal Year 2017**
Traditional Medicaid			
Individuals served	2,684	2,630	2,983
Amount paid	$11,991,012	$11,849,449	$14,419,630
Supplemental nutrition assistance program			
Individuals served	4,275	4,354	4,295
Amount paid	$5,552,366	$5,690,768	$5,630,104
Temporary assistance for needy families			
Individuals served	355	299	260
Amount paid	$284,789	$254,596	$200,327

NOTE: The number of individuals served is a **cumulative** total which includes new refugees, individuals who have been in the country for more than 1 year, and individuals who no longer have refugee status. The funding amounts listed are a combination of state and federal funds.

Refugees also may be receive benefits through the child care assistance program and low-income home energy assistance program. However, DHS' information management programs do not capture data regarding citizenship or refugee status.

Unaccompanied Refugee Minor Program

The Unaccompanied Refugee Minor program provides assistance to eligible unaccompanied refugee minors settled in the state. The program provides the same level of assistance as is available to foster children in the state. When an unaccompanied refugee minor arrives in the state, Lutheran Social Services obtains guardianship of the child and places the child in a licensed foster home.

The committee received the following data regarding the Unaccompanied Refugee Minor program:

Unaccompanied Refugee Minor Program			
	Minors Served	**Payments to Lutheran Social Services of North Dakota for Administrative Expenses**	**Direct Payments for Support of Minor[1]**
Federal fiscal year 2015	72	$627,285	$1,130,996
Federal fiscal year 2016	75	$741,019	$1,117,146
Federal fiscal year 2017 (through June 2017)	76	$527,003	$1,311,396

[1]Includes maintenance payments to foster homes, funds for extraordinary clothing needs, independent living preparation programming, education and training vouchers, and emergency funding.

NOTE: The number of minors served is a **cumulative** total which includes new refugees and children and youth who have been in the country for more than 1 year and no longer have refugee status. Funding for the program is provided from federal funds.

Refugee Medical Assistance Program

The Refugee Medical Assistance program provides funding for medical expenses for unaccompanied minors and other legally admitted refugees. When a refugee arrives in the country it is determined whether the refugee is eligible to enroll in the traditional Medicaid program, Expanded Medicaid program, or children's health insurance program. If a refugee is not eligible to enroll in any of the Medicaid programs, the refugee may be enrolled in the Refugee Medical Assistance program. The medical assistance program is available for the first 8 months a refugee is in the country, or until the age of 21 for an unaccompanied minor.

The committee received the following information regarding the number of individuals receiving assistance under the program and the amount of program payments made since state fiscal year 2013:

Refugee Medical Assistance Program Recipients and Payments (State Fiscal Year)					
	2013	**2014**	**2015[1]**	**2016[1]**	**2017[1,2]**
Number of recipients	267	166	33	18	17
Amount of payments	$617,738	$495,069	$18,970	$9,799	$12,928

[1]The reduction in recipients is due in part to individuals enrolling in the Medicaid Expansion program rather than the Refugee Medical Assistance program.

[2]Additional claims may be incurred for services provided in state fiscal year 2017.

NOTE: The Refugee Medical Assistance program is 100 percent federally funded.

Elementary and Secondary Education

The state definition of an English learner (EL) is an individual who is aged 5 to 21, is enrolled in a North Dakota school district, has a primary language other than English or comes from an environment in which a language other than English significantly impacts the individual's level of English proficiency, and has difficulty speaking, reading, writing, and understanding English as determined by assessment results. Federal law requires states to provide EL programs that meet specific standards.

English learner programs provide instruction to refugees, immigrants, and other individuals. During academic year 2017-18, 3,885 students were enrolled in EL programs. A total of 1,111 of the 3,885 EL students had refugee status. Some refugee students have achieved English proficiency and are not enrolled in EL programs. The committee received the following schedule which details total EL program enrollment at school districts, the number of EL students in the programs that are refugees, and the number of refugee students not enrolled in EL programs.

2017-18 EL Program Enrollment

School District	Total EL Program Enrollment	Number of Refugee Students Enrolled in EL Programs[1]	Number of Refugee Students Not Enrolled in EL Programs[1]
Bismarck	277	38	32
Fargo	969	432	148
Dickinson	127	0	0
Dunseith	47	0	0
Grafton	49	0	0
Grand Forks	396	255	84
Mandan	112	0	0
McKenzie County (Watford City)	98	0	0
Minot	163	0	0
New Town	51	0	0
West Fargo	875	375	130
Williston	240	0	0
Other districts/not listed	481	11[2]	6[2]
Total	3,885	1,111	400

[1]Includes new refugees and individuals who have been in the country for more than 1 year and no longer have refugee status.

[2]Includes students that are not listed for specific school districts due to the small number of refugee students enrolled in the school district.

Funding for EL programs is provided from state and other sources. State funding through the education funding formula is based on average daily membership (ADM). In addition to receiving general ADM funding for students, additional funding is provided for students enrolled in EL programs. The committee received the following schedule that details the general and weighted funding received by school districts for EL students:

2017-18 Funding Formula Payments for EL Students

General ADM Payments for EL Students	Weighted EL Payment	Total Funding for EL Students
$26,738,616	$3,963,252	$30,701,868

State EL grants provide additional funding for instruction of EL students. The 2017-18 school year grants were awarded to the four school districts in the state with the highest populations of EL students in specified proficiency levels. The following schedule details grant awards:

School District	EL Grant Funding Awarded
Fargo	$104,635
West Fargo	83,480
Grand Forks	34,984
Bismarck	26,901
Total	$250,000

Benefits of Refugee Resettlement

Fargo-Moorhead Metropolitan Area Economic Impact

The New American Economy organization reported the following economic impact of new Americans in the Fargo-Moorhead metropolitan area during 2014:

- Paid $13.8 million in state and local taxes.

- Paid $23.5 million in Social Security taxes.
- Paid $5.9 million in Medicare taxes.
- Contributed $542.8 million to the metropolitan area's gross domestic product.

Grand Forks Region Economic Impact

The New American Economy organization reported the following economic impact of new Americans in the Grand Forks region during 2015:

- Paid $14.4 million in state and local taxes.
- Paid $20.4 million in Social Security taxes.
- Paid $5 million in Medicare taxes.
- Contributed $353.7 million to the region's gross domestic product.

Statewide Economic Impact

The New American Economy organization reported the following economic impact of new Americans in North Dakota during 2014:

- Paid $36.4 million in state and local taxes.
- Paid $66.9 million in Social Security taxes.
- Paid $16.2 million in Medicare taxes.
- Earned $559.6 million of income.

Workforce

The committee received testimony from representatives of private businesses and others regarding contributions of refugees and other new Americans to meet workforce needs. Comments included:

- At Cardinal Glass Industries in Fargo, 69 percent of the plant's 268 employees are new Americans, many of whom are resettled refugees. Seventy one percent of team leaders at the plant are new Americans and 85 percent of new hires in 2017 were new Americans.
- Of the new Americans living in the state, 8.1 percent are employed in manufacturing compared to the overall state rate of 7.7 percent.
- New Americans help meet the workforce needs at Bethany Retirement Living in Fargo. Many certified nurse assistants and many housekeeping positions at the facility are filled by individuals originally from Liberia.

The New American Economy organization reported new Americans, in 2015, represented 3.8 percent of the employed labor force in the Grand Forks region. The industries with the largest percentages of new Americans in the labor force included health care (6.8 percent), education (6.0 percent), professional services (5.1 percent), manufacturing (4.7 percent), and recreation and accommodation (4.3 percent).

Committee Recommendations

The committee makes no recommendation regarding the study of refugee resettlement.

AUTISM SPECTRUM DISORDER TASK FORCE

Senate Bill No. 2174 (2009), codified as Section 50-06-32, established an Autism Spectrum Disorder Task Force consisting of the State Health Officer, the Executive Director of the Department of Human Services, the Superintendent of Public Instruction, the Executive Director of the Protection and Advocacy Project, and the following members appointed by the Governor:

- A pediatrician with expertise in the area of autism spectrum disorder (ASD);
- A psychologist with expertise in the area of ASD;
- A college of education faculty member with expertise in the area of ASD;
- A licensed teacher with expertise in the area of ASD;
- An occupational therapist;
- A representative of a health insurance company doing business in the state;

- A representative of a licensed residential care facility for individuals with ASD;
- A parent of a child with ASD;
- A family member of an adult with ASD; and
- A member of the Legislative Assembly.

The purpose of the task force is to examine early intervention and family support services that would enable an individual with ASD to remain in the least restrictive home- or community-based setting, programs transitioning an individual with ASD 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 ASD.

The task force is required to develop a state ASD plan and continue to review and periodically update or amend the plan to serve the needs of individuals with ASD. The task force is required to provide an annual report to the Governor and the Legislative Council regarding the status of the state ASD plan.

Report

The report of the task force stated the task force is working to update the ASD plan to integrate the collective impact design. The collective impact design is a framework that facilitates a collaborative process between multiple organizations and agencies to strengthen available resources. The task force is in the second of three phases of implementing the design.

The task force identified the following draft goals for children from birth through age 18:

- Assure individuals with suspected ASD receive an appropriate diagnosis as soon as possible;
- Review and provide recommendations on the centralized locations for information on ASD; and
- Establish a model identifying training and education opportunities available that address the needs of diverse stakeholders.

The task force also identified the following draft goals for adults age 18 and over:

- Identify the needs and services gaps for adults with ASD;
- Strengthen supports for transitions from adolescent to adult services; and
- Develop more opportunities for adults with ASD to be valued, contributing members of their communities based on their unique strengths, differences, and challenges.

AUTISM SPECTRUM DISORDER VOUCHER PROGRAM PILOT PROJECT

House Bill No. 1038 (2013), codified as Section 50-06-32.1, requires DHS to establish a voucher program pilot project beginning July 1, 2014, to assist in funding equipment and general educational needs related to ASD for individuals below 200 percent of the federal poverty level from age 3 to under age 18 who have been diagnosed with ASD. In addition, the department is required to adopt rules addressing management of the voucher program pilot project and to establish eligibility requirements and exclusions for the voucher program pilot project. The 2015 Legislative Assembly provided funding for 53 voucher slots for the 2015-17 biennium. However, funding for 10 of the slots was removed due to the August 2016 general fund budget reductions. The 2017 Legislative Assembly restored funding for the voucher slots to provide for 53 voucher slots for the 2017-19 biennium. The department is required to provide a report to the Legislative Management regarding the ASD program pilot project. Section 13 of Senate Bill No. 2012 (2015) provided for the continuation of Section 50-06-32.1 to require DHS to continue the ASD voucher program pilot project and to report to the Legislative Management regarding the ASD program pilot project.

Report

The Department of Human Services reported the ASD voucher program began on July 1, 2014, to assist in funding equipment and general educational needs for individuals with incomes below 200 percent of the federal poverty level from age 3 to under age 18 who have been diagnosed with ASD. The voucher may not exceed $12,500 for a fiscal year and any unused funds are returned to the program.

The report indicated 126 children have participated in the program since it began. During state fiscal year 2017, 50 children were served with an average expenditure of $4,398 per child. Items purchased for eligible children include electronic tablets, swimming lessons, activity center memberships, tutoring, and stress-relieving and safety-related items. There are 53 voucher slots available and DHS has received applications from 63 individuals.

CHILDREN'S HEALTH INSURANCE PROGRAM

Section 50-29-02 requires DHS 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. Healthy Steps--North Dakota's children's health insurance plan--provides premium-free health coverage to uninsured children in qualifying families. It is intended to help meet the health care needs of children from working families that earn too much to qualify for full Medicaid coverage but not enough to afford private insurance. To be eligible for the program, a family's net income may not exceed 175 percent of the federal poverty level.

Legislative Appropriations

The schedule below summarizes legislative appropriations for the Healthy Steps program since the 2011-13 biennium.

Biennium	General Fund	Federal Funds	Total
2011-13	$8,517,391	$19,007,011	$27,524,402
2013-15	$11,400,407	$21,293,663	$32,694,070
2015-17	$2,831,220	$17,643,704	$20,474,924
2017-19	$1,870,086	$13,712,891	$15,582,977

Federal Medical Assistance Percentage and North Dakota's Allocation

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, 2012	68.78%	$16,063,553
September 30, 2013	66.59%	$17,311,376
September 30, 2014	65.00%	$18,787,251
September 30, 2015	65.00%	$20,997,498
September 30, 2016	88.00%	$21,240,226
September 30, 2017	88.00%	$21,886,855
September 30, 2018 (estimate)	88.00%	$21,200,000
September 30, 2019 (estimate)	88.00%	$21,200,000

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, 2012	3,872	$272.69
June 30, 2013	4,046	$272.67
June 30, 2014	3,879	$280.52
June 30, 2015	2,591	$287.56
June 30, 2016	2,298	$273.12
June 30, 2017	2,154	$263.16
June 30, 2018	2,156	$310.00
June 30, 2019 (estimate)	2,200	$299.00

MEDICAID EXPANSION PROVIDER REIMBURSEMENT RATES

Section 38 of House Bill No. 1012 (2017) continued the medical assistance expansion program through June 30, 2019. The section provided the contract between DHS and the insurance carrier must include a provision for the carrier to provide DHS with provider reimbursement rate information when selecting a carrier. The section also required DHS to provide the Legislative Management a report regarding provider reimbursement rates under the medial assistance expansion program. The report may include trend data but may not disclose identifiable provider reimbursement rates.

Report

Representatives of DHS presented the following schedule detailing the estimated payment rates under the Medicaid Expansion program compared to Medicare and traditional Medicaid rates as of July 1, 2017:

Type of Service	Estimated Percentage of Medicare	Estimated Percentage of Traditional Medicaid
Professional	179%	179%
Inpatient	184%	173%
Outpatient	190%	264%
Overall	183%	202%

The committee also received the following schedule detailing the minimum reimbursement rates available to North Dakota pharmacy providers under the Medicaid Expansion program:

	Floor Rate	Pricing Methodology
Ingredient cost - Brand	Average wholesale price minus 14%	Lower of submitted ingredient cost, contracted average wholesale price discount or maximum allowable cost, or usual and customary
Ingredient cost - Generic	Maximum allowable cost	Lower of submitted ingredient cost, maximum allowable cost, or usual and customary
Dispensing fee	$1.50	Fee does not apply to usual and customary claims

NURSING HOME AND HOME- AND COMMUNITY-BASED SERVICES

Section 3 of House Bill No. 1038 (2017) requires DHS to review services and related funding provided within its long-term care division for the 2015-17 and 2017-19 bienniums. The department is required to report to the Legislative Management during the 2017-18 interim on the levels of funding provided for and spent on nursing home services and home- and community-based services by program during these time periods and to provide recommendations for options to increase the number and level of services and funding provided for home- and community-based services for the 2019-21 biennium.

Report

Representatives of DHS reported home- and community-based programs administered by the DHS Long-Term Care Division include SPED, expanded SPED, personal care, targeted case management, Medicaid home- and community-based services waiver, children's medically fragile waiver, Medicaid technology-dependent waiver, program for all-inclusive care for the elderly (PACE), children's hospice waiver, money follows the person sustainability grant, Medicaid children's autism waiver, and the state autism voucher. The department's budget for the 2017-19 biennium includes $693.8 million for long-term care services, of which $91.4 million is for home- and community-based services.

The committee reviewed the following schedule detailing home- and community-based services expenditures and persons served since state fiscal year 2012:

Home- and Community-Based Services Funding and Persons Served								
	2012	2013	2014	2015	2016	2017	2018 (Estimated)	2019 (Estimated)
Expenditures	$13,559,588	$14,139,128	$30,661,463	$32,050,512	$36,767,469	$36,293,650	$41,356,324	$43,012,056
Monthly average persons served	1,709	1,690	2,278	2,263	2,124	2,157	2,225	2,582

The committee received the following schedule detailing the average cost per year per person for individuals receiving care through nursing home facilities, basic care facilities, and home- and community-based services:

Average Cost Per Person Per Year for Care Services			
Year	Home- and Community-Based Services	Basic Care Facilities	Nursing Home Facilities
2012	$7,935	$23,460	$67,755
2013	$8,365	$23,473	$70,415
2014	$13,460	$25,811	$74,912
2015	$14,165	$26,682	$77,927
2016	$17,313	$32,521	$88,638
2017	$16,823	$30,590	$87,467
2018 (estimated)	$17,561	$31,176	$88,784
2019 (estimated)	$17,933	$32,878	$89,832

Representatives of DHS reviewed the following proposals to increase the use of home- and community-based services:

- Add additional service options to the Medicaid home- and community-based waiver for aged and disabled individuals similar to the Medicaid intellectual and developmental disability waiver;
- Develop agency adult foster care to increase provider capacity and residential services options; and
- Address medication administration issues for aged and disabled individuals.

The committee also received information regarding the SPED and expanded SPED programs. The programs provide services for individuals who are older or physically disabled to allow the individuals to live independently. Examples of services provided include chore services, homemaker services, and home-delivered meals. County social services offices are required to provide case management services for the programs.

To qualify for the SPED program, an individual must have less than $50,000 of available liquid assets. An individual must also meet functional assessment requirements that are based on impairments in activities of daily living. As of September 2018, 1,161 individuals were receiving services through the SPED program.

To qualify for the expanded SPED program, an individual must be Medicaid eligible and have income below specified levels. An individual also must meet functional assessment requirements based on impairments in activities of daily living. As of September 2018, 186 individuals were receiving services through the expanded SPED program.

The service payments for elderly and disabled program uses an income limit level sliding fee schedule to determine a recipient's copayment for services received under the program. Since 2003, the Legislative Assembly has adjusted the SPED sliding fee schedule twice. In 2003, legislative intent provided for reductions in the fee schedule income limit levels and divided the fee schedule into two separate schedules with the use of each schedule dependent upon whether an individual has over $25,000 of liquid assets. In 2009, the Legislative Assembly appropriated additional funding to increase the income limit levels of the sliding fee schedules based on cost of living increases.

Committee Recommendations

The committee recommends:

- House Bill No. 1032 to require DHS to establish and revise a sliding fee schedule biennially for the SPED program;
- House Bill No. 1033 to direct DHS to create a pilot program for independent home- and community-based services case managers for the SPED and expanded SPED programs; and
- House Bill No. 1034 to require DHS to establish guidelines for long-term care services providers to deliver home- and community-based services.

MEDICAID FRAUD CONTROL UNIT STUDY

Section 1 of House Bill No. 1226 (2017) requires DHS, with the cooperation of the Governor and Attorney General, to study the feasibility and desirability of establishing a Medicaid fraud control unit. The department was required to provide a report to the Legislative Management prior to August 1, 2018, regarding the results of the study.

Background

Section 1902(a)(61) of the federal Social Security Act requires states to operate a Medicaid fraud and abuse control unit unless the state demonstrates the operation of a unit would not be cost-effective and beneficiaries of the plan will be protected from abuse and neglect in connection with the provision of medical assistance without the control unit. North Dakota has received an exemption since 1994 from the requirement to operate a Medicaid fraud control unit. In January 2017, the Centers for Medicare and Medicaid Services (CMS) notified the Governor the state's exemption would not be continued and requested the state to provide a plan to implement a Medicaid fraud control unit.

Report

Representatives of DHS and Attorney General's office presented the report regarding the feasibility and desirability of establishing a Medicaid fraud control unit. The committee was informed the primary function of a Medicaid fraud control unit is to investigate provider fraud, including billing for services not performed, billing for a more expensive process, billing twice for the same service, and billing for services that should be combined into one billing. A fraud control unit also may investigate nursing home neglect and abuse complaints and theft of nursing home resident personal funds.

The committee received information regarding Medicaid fraud control units operated by Montana, South Dakota, and Wyoming. The number of staff members assigned to the fraud control units ranged from four staff in Wyoming to nine staff in Montana. Unit staff generally consist of a combination of attorneys, investigators, auditors, administrative assistants, legal assistants, and unit directors.

The report indicated the state has the option to establish a Medicaid fraud control unit using qui tam provisions. Qui tam is a whistleblower law that allows private citizens to sue any individuals, companies, or other entities defrauding the state and recover damages and penalties on the state's behalf. To initiate a qui tam action, a private citizen, also known as a "realtor", must file a civil complaint with the court and serve a copy of the complaint and relevant evidence to the Attorney General. The state must decide whether to take over the case or allow the private citizen to litigate the case. The private citizen may be eligible to receive a portion of any proceeds recovered in the case.

The Medicaid fraud control unit workgroup recommended the following staffing levels for a North Dakota fraud control unit based on whether qui tam provisions are utilized:

Recommended Staffing Levels	
Qui Tam Provisions Not Utilized	**Qui Tam Provisions Utilized**
1 Attorney/Director (criminal focus) 1 Attorney (civil focus) 2 Investigators 2 Auditors 1 Support staff	1 Attorney/Director (assist with criminal focus) 1 Attorney (criminal focus) 1 Attorney (civil focus) 2 Investigators 2 Auditors 1 Criminal analyst 1 Support staff
7 Total staff positions	9 Total staff positions

The following are estimated 2019-21 and 2021-23 biennium budgets for a North Dakota fraud control unit based on whether qui tam provisions are utilized:

	Qui Tam Provisions Not Utilized		Qui Tam Provisions Utilized	
	2019-21 Biennium	**2021-23 Biennium**	**2019-21 Biennium**	**2021-23 Biennium**
Estimated expenses				
Salaries and wages	$1,333,716	$1,412,965	$1,716,394	$1,819,328
Operating expenses	398,809	361,900	511,496	413,432
Equipment	84,800	0	84,800	0
Total	$1,817,325	$1,774,865	$2,312,690	$2,232,760
Funding sources				
General fund	$181,733	$310,601	$231,269	$390,733
Federal funds	1,635,592	1,464,264	2,081,421	1,842,027
Total funding	$1,817,325	$1,774,865	$2,312,690	$2,232,760

The Medicaid fraud control unit would be funded 90 percent from federal funds the first 3 years after being established and would be funded 75 percent from federal funds after 3 years.

DEVELOPMENTAL DISABILITY MEDICAID WAIVER STUDY

Section 2 of Senate Bill No. 2041 (2017) required DHS to study the current eligibility requirements for the developmental disability Medicaid waiver. The study must include an analysis of whether the current developmental disability waiver eligibility determination protocol uses age-appropriate assessment methods, uses assessment tools reliable and valid in nature for level of need determinations, and utilizes assessment information that may already be available in an individual's record. The study also must include an evaluation of the feasibility and desirability of including in the eligibility determination consideration of related conditions and the possible use of certain medical conditions, such as Down syndrome. The department was required to report to the Legislative Management prior to August 1, 2018, regarding the result of the study.

Background

In March 2014, CMS established a new rule relating to the requirements for the qualities of settings eligible for reimbursement for Medicaid home- and community-based services, which are provided by the federal 1915(c) home- and community-based services waivers. The Department of Human Services completed a review of services, which included site visits and work with CMS, consumers, and providers to assure compliance with new rules. Section 1 of Senate Bill No. 2234 (2015) required DHS to study eligibility for developmental disability waivers and to provide a report to the Legislative Management regarding the eligibility for developmental disability waivers.

The Department of Human Services created an internal eligibility workgroup in October 2014 to review the new *Diagnostic and Statistical Manual of Mental Disorders*, American Psychiatric Association, 5th edition, text revision (2013), and its impact on developmental disability eligibility. Initial recommendations provided by the workgroup include:

- If cognitive testing has been completed and is still valid, it will be considered in eligibility determination, but will not hold as much weight in the eligibility formula as it currently does.
- If cognitive testing has not been completed or it is no longer valid, it will not be required, but cognitive screening will be required.
- Adaptive functioning testing will be required and will hold more weight in the eligibility formula than intellectual functioning.
- Individuals with related conditions must have an intellectual disability or adaptive functioning disability.

The Department of Human Services requested guidance from CMS regarding eligibility of developmental disabilities case management services. An individual must qualify as needing an institutional level of care to be eligible for the

developmental disabilities waiver. Even though an individual may meet certain criteria to be eligible for services, that individual may not qualify for any services because the individual does not meet the institutional level of care requirement. A state may choose its level of care for determining eligibility for developmental disabilities waivers, which includes hospitalization, intermediate care facility, or nursing facility. Various tools are available to help states make a determination and a state must receive approval from CMS for its level of care. North Dakota chose an institutional level of care.

Report

Representatives of DHS reported the department requested technical assistance from the CMS home- and community-based services technical assistance project. The goals of receiving the assistance were to conduct a comprehensive review of the state's existing Medicaid waiver programs to identify potential paths for eligibility for individuals without an intellectual or developmental disability, to provide the department with strategies to improve and maintain consistency in the application of criteria, to assist the department in identifying strategies to address gaps in service, to provide technical assistance relating to mitigating conflict of interest in case management structures, and to provide information and strategies related to person-centered practices and planning.

The Department of Human Services received several recommendations through the home- and community-based services technical assistance project which the department is reviewing.

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.

Pursuant to Section 54-35-15.2 the committee's responsibilities include:

1. Meet at least once each calendar quarter.
2. Receive reports from the Chief Information Officer.
3. Review the activities of the Information Technology Department (ITD).
4. Receive and review information related to information technology (IT) projects with a total cost of $500,000 or more, including startup and closeout reports.
5. Receive and review information regarding any IT project of an executive branch agency with a total cost of between $100,000 and $500,000 as determined necessary by ITD.
6. Receive a report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee (SITAC) relating to the prioritization of proposed major IT projects and other IT issues.
7. Receive information from the State Board of Higher Education regarding higher education IT planning, services, and major projects.

Section 54-35-15.3 authorizes the Information Technology Committee to review any IT project or IT plan. 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. This duty did not require action by the Information Technology Committee during the 2017-18 interim.

Section 54-35-15.4 provides the Information Technology Committee may request the State Auditor to conduct an IT compliance review, including an agency's IT management and planning as well as compliance with IT plans and standards. This duty did not require action by the Information Technology Committee during the 2017-18 interim.

The committee is responsible for receiving various reports, including:

- A report from the State Board of Higher Education regarding higher education IT planning, services, and major projects (Sections 15-10-44 and 54-35-15.2).
- A report from the Chief Information Officer regarding the recommendations of the SITAC relating to the prioritization of proposed major IT projects and other IT issues (Sections 54-35-15.2 and 54-59-02.1).
- 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 Chief Information Officer of the North Dakota University System regarding coordination of IT between ITD and higher education (Section 54-59-12).
- The annual report from ITD (Section 54-59-19).

In addition to its direct statutory responsibilities for the 2017-18 interim, the Legislative Management assigned the committee the following responsibilities:

- Receive a report from the Statewide Longitudinal Data System Committee on the status of the statewide longitudinal data system (SLDS), including recommendations for further development, cost proposals, proposals for legislation, and data sharing governance (Section 54-59-36).
- Receive a report from the Emergency Services Communications Coordinating Committee before November 1, 2018, regarding the use of assessed communications services fee revenue and recommendations for changes to the operating standards for emergency services communications (Section 57-40.6-12).
- Study the delivery and cost of ITD's services provided to state agencies, including a review of the department's cost of services, staffing, and billing processes. The study includes identifying improvements to the efficiency and effectiveness of the department's services that will result in reduced costs for state agencies.

Committee members were Representatives Corey Mock (Chairman), Randy Boehning, Glen Bosch, Christopher D. Olson, Gary R. Sukut, and Robin Weisz; Senators Howard C. Anderson, Jr., Kyle Davison, Richard Marcellais, Larry J. Robinson, and Terry M. Wanzek; and Chief Information Officer Shawn Riley.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

INFORMATION TECHNOLOGY DEPARTMENT INITIATIVES

Cloud Computing

The committee received information from ITD regarding the department's cloud computing initiatives. Cloud computing is the delivery of computer services over the Internet. The department reported the department is transitioning to cloud computing because cloud technology has been an IT standard for 15 years, many on-premise technologies are becoming obsolete, and many new systems are cloud-based. The department reported cloud technology:

- Offers security, operational, and cost advantages;
- Allows for increased data storage capabilities at lower costs than on-premise data centers;
- Increases the ability to deploy new IT systems;
- Allows for the delivery of data and computer power to any platform at any location; and
- Improves experience delivery for customers, system up-times and backups, and deployment flexibility.

The committee learned ITD's strategy includes making North Dakota IT "cloud first." This means new IT systems will be evaluated for deployment in the cloud as the first option, and current IT systems will be evaluated for a transition to the cloud. Information technology systems will not be placed automatically in the cloud and all system transitions to the cloud must be made in collaboration with agency personnel responsible for the system and data. The department reported the cloud automatically does not make North Dakota IT more secure, but it positions the state to increase overall security at a lower cost than currently available using on-premise data centers. The department reported data in the cloud is encrypted and there are network boundary protections to secure the data.

The committee was informed the state has contracts to allow the purchase of cloud services from Microsoft, Amazon, IBM, and Oracle. The contract with Microsoft was renewed in May 2017 and the Amazon contract was renewed in July 2017. The Information Technology Department reported these contracts ensure North Dakota data is used only by and for North Dakota, considers account privacy and security, and complies with Chapter 44-04 and other North Dakota open record laws.

The Information Technology Department reported the costs of cloud computing services are approximately equal to on-premise technology costs currently, but cloud computing will offer cost-savings in approximately 5 years. The department is attempting to include the cost of cloud services in the ITD rate structure, rather than requiring state agencies to include the cost of cloud services in agency budgets. Although cloud costs may be incorporated into ITD rates over time, ITD does not know if rates will increase or decrease during the 2021-23 biennium.

The committee was informed the state will continue to partner with Dakota Carrier Network (DCN) as the state transitions to cloud services, which will provide faster service speeds. The Information Technology Department reported the increase in service speed could be obtained within the current ITD budget. The department reported additional equipment will be necessary but the equipment will be purchased by DCN.

The Information Technology Department executed a contract extension with DCN to increase the infrastructure and bandwidth capacity of the Statewide Technology Access for Government and Education network (STAGEnet). The extension is for 2 years, starting on July 1, 2019, and will include an additional 100 gigabyte capacity that primarily benefits K-12 and higher education, as well as state and local government. The extension reduces the cost per gigabyte of data provided and is considered a cost-neutral investment.

The Information Technology Department reported in June 2018 the department and OMB consolidated multiple Microsoft licensing enrollments into one Microsoft Office 365 agreement. The agreement covers 6,500 employees in 34 agencies, including the Governor's cabinet agencies, the Bank of North Dakota, and current department desktop support customers. Additional agencies may be added to the agreement. The agreement allows for additional security features, including multifactor authentication, self-service password reset, mobile device management, and data loss prevention.

As of June 2018, 30 state agencies are using 118 software-as-a-service applications or vendor-hosted applications in the cloud. The Information Technology Department reported no legislative action is necessary to continue to move applications and systems to the cloud.

Shared Services Unification

The committee received information from ITD regarding the department's shared services unification initiatives. The department is implementing an IT shared services unification plan to consolidate IT services, such as desktop support and help desk services, and to consolidate IT personnel in the Governor's cabinet of executive branch state agencies. The department reported the unification plan will improve IT productivity by establishing common systems and processes for communication and collaboration among executive branch agencies. The department reported the unification plan will focus on cost reduction and operational efficiencies and will provide data hosting, storage, and archiving opportunities. According to ITD, the unification will eliminate IT redundancies in executive branch agencies, decrease enterprise risk, improve IT investment success, and maximize cyber defense by utilizing the same system, data protection, and IT training. The state has seven service management systems and four application development models. The unification plan would reduce the state to one service management system and one application development model.

According to ITD, the state utilizes 91 percent of IT full-time equivalent (FTE) employees and resources for running operations, 9 percent for growing IT, and 0 percent for transforming IT. Through the cloud computing and shared services unification plans and other initiatives, ITD plans to allocate 50 percent of IT employees to running operations, 30 percent to growing IT, and 20 percent to transforming IT.

The Information Technology Department conducted an assessment of all executive branch IT employees, evaluating staff skills, needs, strategies, objectives, and costs. The major phases of the unification workforce transition process includes data gathering, transitional grouping, deep data analysis, and reporting. The department identified all positions in Governor's cabinet agencies that include IT-related functions to evaluate whether these positions would be included in the unification plan.

At the time of this report, ITD is in the deep data analysis phase. The department has identified 511 IT FTE positions, of which 344.30 FTE positions are employees of ITD and 167 FTE positions are from 12 Governor's cabinet agencies. Funding for the salaries of the 167 Governor's cabinet IT FTE positions totals $5.6 million from the general fund, $8.4 million from special funds, and $4.6 million from federal funds. The salaries of the 344.30 ITD FTE positions total $74.7 million, of which $12.2 million is from the general fund and $62.5 million is from special funds.

ITD reported the unification plan includes the reorganization of top positions in ITD, including the establishment of positions which will report directly to the Chief Information Officer (CIO), including a Chief Operations Officer (COO), Chief Data Officer (CDO), Chief Technology Officer (CTO), Chief Reinvention Officer (CRO), and Chief Information Security Officer (CISO). The CDO, CTO, and CRO are new positions while the COO and CISO are positions that exist in ITD, but titles and some job duties have changed. The department reported salary savings from vacant positions will be used to provide funding for the three new positions.

The unification plan will be completed in December 2018 and the plan will include cost-savings, long-term projections, and a new organization chart. The report phase of the unification plan includes providing information to the Legislative Assembly during the 2019 legislative session. The Information Technology Department's 2019-21 biennium budget request will include transfers of the 167 IT FTE positions from the Governor's cabinet agencies and the Department of Trust Lands to the new shared service. The budget requests will include a rebranding of ITD to the new shared service.

Cybersecurity

The committee received information from ITD regarding the department's cybersecurity initiatives. The committee learned from March 2018 through August 2018, the state has defended against 34 million vulnerability attacks, 3.3 million denial of service attacks, 88 million spam and phishing messages, and 1,300 "zero-day" attacks. A "zero-day" attack is a software attack that has no existing solution to mitigate the attack. The department reported state government must focus on delivering security services that will help the state effectively secure, defend, and respond to cyber attacks. North Dakota is a target for cybersecurity criminals because the state is the second largest energy producer in the country, has significant nuclear and conventional military assets, and has decentralized citizen data. The reports indicated data stolen in K-12 schools often is used for identify theft, ransom, and access to other systems. The department has started strategic, operational, and workforce initiatives to mitigate cybersecurity risks.

The Information Technology Department reported the state has cybersecurity insurance, but the insurance is valuable when responding to cybersecurity incidents rather than preventing cybersecurity attacks. The department reported cybersecurity insurance may provide protection from legal action following a breach of information, but does not address how to replace lost data or any potential reputation damages.

In July 2018, the state cybersecurity team detected more than 178,000 attacks on political subdivisions, of which 66,000 were targeting city governments and 111,000 were targeting county governments. The Information Technology Department reported North Dakota K-12 schools have been cyber attacked by North Korea and other nation states. According to the report, if ITD successfully defends against 99.999999 percent of cyber attacks, the state will still be breached every 18 minutes.

The information technology shared service includes 11 cybersecurity FTE positions to support 252,000 state, K-12, higher education, and political subdivision users. To address cybersecurity concerns, ITD will request $11.4 million for cybersecurity tools and systems, as well as 37 FTE positions as an optional package in ITD's 2019-21 biennium budget. The 37 FTE positions would include 8 state government FTE positions, 20 K-12 FTE positions, 5 higher education FTE positions, 2 FTE positions in the Securities Department and Department of Financial Institutions, and 2 political subdivision FTE positions.

The $11.4 million optional budget request does not include funding for the additional 37 FTE positions being requested. The $11.4 million request is considered a one-time funding request, but there would be ongoing expenditures of approximately $3.5 million to maintain the cybersecurity tools and systems.

The Information Technology Department reported the total cost to state agencies for ITD's cybersecurity initiatives is unknown. The department reported some cyber costs can be absorbed by ITD within the current service rates, but additional general fund appropriations may be needed. The report indicated an alternative funding option is to increase ITD service rates, which may require additional appropriations for state agencies to pay ITD for additional cybersecurity costs.

STUDY OF INFORMATION TECHNOLOGY DEPARTMENT SERVICES AND RATES

Background Information

The Legislative Management assigned the committee the responsibility of studying ITD services and rates pursuant to Section 8 of Senate Bill No. 2001 (2017). The study is to include an analysis of the delivery and cost of ITD services provided to state agencies. The study must include a review of ITD's cost of services, staffing, and billing processes and must identify improvements to the efficiency and effectiveness of ITD's services that will result in reduced costs for state agencies.

The committee received information from ITD regarding rate types and fee structures, rate trends from previous bienniums, federal requirements regarding rates, how rates are established for each service, services provided to state agencies, the effect of salary and health insurance increases on rates, how cloud hosting affects rates, and how the shared services unification plan will impact services and rates. The committee also received information from representatives of the University System regarding higher education services and rates, from state agencies receiving IT services from ITD, and from the North Dakota Association of Counties regarding services provided by ITD to political subdivisions.

The Information Technology Department reported the funding associated with ITD service rates is $134.8 million in the 2017-19 biennium. The department operates as an internal service fund, which results in the federal government auditing ITD regularly to ensure ITD is not exceeding reserve maximums related to revenue collected for services provided to other state agencies. The maximum amount of reserves the federal government allows ITD to maintain is equivalent to approximately 2 months of operating costs.

Survey of State Agencies and Information Received

At the request of the committee, the Legislative Council surveyed state agencies regarding services received from ITD and rates charged for services provided. Of the 57 agencies asked to participate, 54 responded with completed surveys. Of the 54 responding agencies, 52 stated the agency receives IT services from ITD. The 52 responding agencies reported IT expenditures paid to ITD of $114,572,745 in the 2013-15 biennium, $106,193,013 in the 2015-17 biennium, and a projected expenditure total of $118,505,164 during the 2017-19 biennium. The agencies that do not receive services from ITD, the Northern Crops Institute and the Main Research Center, receive IT services from the North Dakota State University Core Technology Services.

The Information Technology Department provides 96 unique data processing services and 22 telecommunications services while applying a 4.9 percent overhead charge for all services provided. State agencies revealed the most common IT services received from ITD were telecommunication-related services, email hosting, network services and hosting, website development and support, website hosting, desktop support, file and print services, software development and maintenance, server hosting, application hosting, database hosting, records management, project management, video conferencing, and instant messaging.

A total of 50 agencies responded to a question related to the services provided by ITD, which asked the agencies to rank experiences with ITD related to certain categories. The agencies reported an average approval rating of 3.69 on a scale of 5 regarding ITD key performance measures. The agencies reported an average approval rating of 3.79 related to customer satisfaction and an average of 3.85 related to services provided by ITD. The 50 agencies rated overall experience with ITD as follows:

- 5 - Very satisfied - 6 agencies
- 4 - Mostly satisfied - 33 agencies
- 3 - Somewhat satisfied - 10 agencies
- 2 - Somewhat dissatisfied - 1 agency
- 1 - Mostly dissatisfied - 0 agencies
- 0 - Very dissatisfied - 0 agencies

The state agencies were asked if the rates charged by ITD were fair given the services provided from ITD. Of the 52 agencies receiving ITD services, 13 did not provide a conclusive answer to the question. Of the remaining 39, 12 agencies, or 30.8 percent, believed the ITD rates were fair while 27 agencies, or 69.2 percent, indicated dissatisfaction with the rates charged by ITD.

In response to information received as part of the survey of state agencies, the committee requested additional information from the State Auditor's office, Department of Trust Lands, State Library, Department of Agriculture, Council on the Arts, Parks and Recreation Department, State Water Commission, Department of Transportation (DOT), and the North Dakota Association of Counties regarding ITD services and rates. The agencies reported the overall service from ITD was satisfactory and rates were appropriate. The agency concerns included ITD's services being designed for large agencies rather than small to medium agencies, the need for ITD to partner with the private sector for agency specific needs, ensuring an accurate way to bill state agencies for ITD services, and suggesting ITD provide agencies additional e-commerce guidance.

The Information Technology Department reported the department's goal is to improve operational effectiveness, including managing the cost per unit of service provided to ITD customers. The study performed by the committee provided feedback ITD will use in operational assessments and unification initiatives.

Recommendation

Because rates charged and services provided by ITD may change due to recent department initiatives relating to cloud computing and shared services unification of information technology employees, the committee recommends the Legislative Assembly continue to monitor ITD services and rates and the impact on state agencies.

DISTRIBUTED LEDGER TECHNOLOGY AND BLOCKCHAIN

Background Information

The committee received information from representatives of ITD and IBM Corporation regarding distributed ledger technology and blockchain. Distributed ledger technology is a database containing replicated, shared, and synchronized digital data available to users at multiple sites, countries, or institutions without the use of a central administrator or centralized data storage. Blockchain is a new technology intended to help users trust data stored in information technology systems. Blockchain is a list of transactions shared between multiple parties in which new transactions are added at the end of the blockchain. The existing data is never changed or deleted when new data is added. If a portion of data is changed, the entire blockchain will change, resulting in the user being able to detect the change in data.

Blockchain was first used for cryptocurrency, specifically Bitcoin, but blockchain is not exclusively related to cryptocurrency. Blockchain technology is used in tracking fruits and dairy products from growers to consumers, tracking marijuana from seed to sale to consumers, and tracking grants.

The committee was informed blockchain for government involves four components--identity, business assets, privacy, and governance. Identity includes all known participants, business assets vary for each blockchain use, privacy addresses the confidentiality of transactions between parties, and governance relates to a group overseeing the rules and operations of blockchain technology and distributed ledgers.

Recommendation

The committee recommends House Concurrent Resolution No. 3002 providing for a Legislative Management study of distributed ledger technology and blockchain for state government. The study is to include the potential benefits of distributed ledger technology and blockchain for state government, including an evaluation of the effects on government accounting and budgeting, decisionmaking, information technology authentication, records management, remote

electronic voting, and other e-government services and applications, such as tax collection, land registry, distribution of benefits, digital currencies, and other potential benefits.

INFORMATION TECHNOLOGY DEPARTMENT STRATEGIC PLAN AND ANNUAL REPORT

Strategic Plan

Section 54-59-06 requires ITD to develop and maintain a business plan and Section 54-35-15.2 requires the committee to review the plan. Pursuant to that directive, the department prepared a strategic business plan for the 2019-21 biennium. The 2019-21 biennium strategic plan focuses on alignment, delivery, and efficiency. The plan includes establishing, maintaining, and delivering services that align IT investments and structures with the state's business needs, increasing work effort efficiency, and continuously improving how services are delivered. At the time of this report, the strategic plan is being finalized with the statewide information technology plan, which is scheduled to be completed in November 2018.

Annual Report

Section 54-59-19 requires ITD to prepare an annual report on information technology projects, services, plans, and benefits and to provide the report to the committee. Pursuant to the directive, the department prepared and presented reports for fiscal year 2017 and fiscal year 2018, which include an executive summary, rate comparisons, and information on the department's performance.

The department monitors the cost and revenue for each service to ensure 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 Information Technology Department's fiscal year 2018 revenue received from state agencies totaled $62.9 million. Of this amount, approximately $25.8 million, or 41 percent, is from the Department of Human Services (DHS). The department spent revenue received from state agencies on the following services: computer hosting (31 percent), software development (28 percent), direct bill-backs (18 percent), network services (17 percent), telephone services (5 percent), and other services (1 percent).

The Information Technology Department employee turnover rate was 8.03 percent in fiscal year 2015, 4.56 percent in fiscal year 2016, 7.29 percent in fiscal year 2017, and fluctuated between 6.70 percent and 9.75 percent each month during fiscal year 2018.

INFORMATION TECHNOLOGY STANDARDS AND STATEWIDE PLAN

Information Technology 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 ITD. Information technology policies, standards, and guidelines must be reviewed by the SITAC. The department has adopted policies, standards, and guidelines in a number of areas and continues to update and adopt new policies, standards, and guidelines as necessary.

Statewide Information Technology Plan

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. Section 54-35-15.2 requires the committee to review the plan. The plan must be prepared based on guidelines developed by the department and must be submitted to the department by August 15 of each even-numbered year unless the Chief Information Officer grants an extension. The Information Technology 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 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 Information Technology Department is finalizing the statewide information technology plan, which is scheduled to be completed in November 2018. The department will present the plan to the 2019 Legislative Assembly. The plan will include strategic focuses for each agency related to the Main Street Initiative, recovery, addiction, and behavioral health, reinventing government, strengthening tribal communities, and transforming education.

LARGE INFORMATION TECHNOLOGY PROJECTS

The committee is authorized to review any information technology project or information technology plan. If the committee determines 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

The committee received information regarding the project management life cycle process which includes:

- **Project origination** - Proposed projects are evaluated for the next planning cycle, and the selected projects are included in the biennial budgeting process.
- **Project initiation** - The overall parameters of a project are defined, and project management is established to monitor the project.
- **Project planning** - The exact parameters of a project are defined to ensure all the prerequisites for the project execution and control are in place.
- **Project execution and control** - The project developer produces deliverable results, and the project manager monitors the status of the project.
- **Project closeout** - The project is assessed to identify any lessons learned and best practices to be applied to future projects.

Review of Large Information Technology Projects

For major information technology projects in progress during the 2017-18 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 and the iterative project reports received by the committee:

Project Startup Reports

Agency	Project Name	Project Description	Estimated Cost	Estimated Completion Date
ITD	SLDS data utilization project	Data literacy supplement project for the prekindergarten through postsecondary education SLDS program	$6,475,690	September 2019
DHS	Operating rules health enterprise project	Health enterprise Medicaid management information system enhancement	$4,630,781	May 2017
DHS	Electronic health records replacement system	Replacement of two behavioral health electronic health record systems for the Field Services Division	$5,894,647	December 2018
Workforce Safety and Insurance	Extranet project	Project for a self-service portal for external Workforce Safety and Insurance stakeholders	$504,877	June 2017
Workforce Safety and Insurance	myWSI enhancement project	Enhancements for the myWSI system to review claim and report information	$735,509	June 2019
DOT	REAL ID project	Nationwide program to improve reliability and accuracy of state-issued driver's license and identification cards	$550,000	September 2018
DHS	New Medicaid cards project	Update to the health enterprise Medicaid management information system to comply with Center for Medicare and Medicaid Services	$2,513,220	December 2018
State Department of Health	Medical marijuana system	Implementation of a medical marijuana program for production, processing, sale, and dispensable medical marijuana	$231,000	December 2018

Project Closeout Reports

Agency	Project Name	Project Description	Actual Cost	Actual Completion Date
Workforce Safety and Insurance	Extranet project	Project for a self-service portal for external Workforce Safety and Insurance stakeholders	$469,031 (Budget of $504,878)	8 months - Same as scheduled

Project Closeout Reports				
			Actual	
Agency	Project Name	Project Description	Cost	Completion Date
ITD	SLDS	Implementation of a prekindergarten through postsecondary education data system	$8,102,927 (Budget of $8,296,286)	68 months -Same as scheduled
Judicial branch	Disaster recovery system project	Establish a disaster recovery site in a remote location to minimize data loss	$1,656,349 (Budget of $2,000,000)	14 months - Same as scheduled
DOT	Motor vehicle system redesign	Database replacement for all owner and vehicle records	$7,964,838 (Budget of $8,514,160)	21 months - Same as scheduled
DHS	Transformed Medicaid statistical information system	Improvement and expansion of Medicaid data repository	$1,907,721 (Budget of $1,937,496)	32 months - 1 month behind schedule
DHS	Operating rules health enterprise project	Health enterprise Medicaid management information system enhancement	$4,528,621 (Budget of $4,630,781)	13 months - 6 months behind schedule
Bank of North Dakota	Managed file transfer project	Develop a system to securely transfer financial files between the Bank and its partners	$596,498 (Budget of $646,152)	29 months - 2 months behind schedule
Department of Public Instruction	NDFoods 2.0 project	Enhancement of the NDFoods system, program applications, and claims foods management system	$676,020 (Budget of $2,454,622)	19 months - 20 months ahead of schedule
DOT	REAL ID project	Nationwide program to improve reliability and accuracy of state-issued driver's license and identification cards	$494,341 (Budget of $550,000)	8 months - 3 months ahead of schedule
State Department of Health	Immunization information system	Database for vaccination data for North Dakota residents	$3,568,398 (Budget of $3,932,794)	38 months - Same as scheduled

Iterative Project Reports

Workforce Safety and Insurance - Claims and policy system replacement project

Replacement of core business applications related to claims and policies to improve customer service

Phase	Costs	Completion Dates
• Phase 1 - Planning and analysis	N/A	June 2015 (Actual)
• Phase 2 - Database consolidation and shared components refacing - (Releases 1 - 3)	$3,740,415 (Actual)	February 2017 (Actual)
• Phase 3 - Policy application redesign - (Releases 4 - 9)	$10,776,696 (Estimated)	June 2021 (Estimated)
• Phase 4 - Claims application redesign - (Releases 10 - 20)	$14,947,740 (Estimated)	June 2026 (Estimated)
• Phase 5 - Transition, program, closeout	$36,850 (Estimated)	June 2026 (Estimated)

Department of Human Services - Eligibility system modernization project

Replacement of eligibility systems with a single system to comply with requirements of the Patient Protection and Affordable Care Act

Phase	Costs	Completion Dates
• Phase 1 - Convert systems that determine eligibility under the federal Affordable Care Act	$49,842,739 (Actual)	February 2016 (Actual)
• Phase 2 - Planning for conversion of other system components	$102,923,705 (Estimated)	March 2019 (Estimated)
• Phase 3 - Eligibility coverages for aged, blind, and disabled individuals	$5,545,633 (Estimated)	December 2019 (Estimated)
• Phase 4 - Implementation of the low-income home energy assistance program	Unknown	Fall of 2020 (Estimated)

Workforce Safety and Insurance - Claims and Policy System

The committee received information from representatives of Workforce Safety and Insurance (WSI) regarding the claims and policy system replacement project. During the 2013-15 biennium, WSI terminated an information technology transformation program project, because the vendor, Aon eSolutions, Inc., failed to provide adequate evidence the project could be completed. Workforce Safety and Insurance filed suit against the vendor and received a settlement payment of $5 million. Workforce Safety and Insurance replanned the project and began development on the claims and policy system replacement project in July 2015. The project has five major phases, including 20 major release projects. The first phase includes business analysis and detailed planning, which was completed in June 2015. The second phase

includes database consolidation and shared components refacing and was completed in February 2017. All three releases of the second phase of the project were completed on time and under budget.

The third phase includes policy application redesign and is comprised of releases 4 through 9. Release 4 was completed 11.3 percent under budget and 4.0 percent behind schedule in November 2017. Release 5 was completed 10.7 percent under budget and 9.2 percent behind schedule in July 2018. As of August 2018, release 6 is 30 percent complete, is 27 percent under budget, and is scheduled to be completed in May 2019. Releases 7, 8, and 9 are estimated to be completed during the 2019-21 biennium at a total cost of $4,525,675.

The fourth phase includes claims application redesign and is comprised of releases 10 through 20. Phase four is estimated to begin during fiscal year 2021 and conclude in fiscal year 2026 at a total cost of $14,947,740. The fifth phase includes transition, programming, and closeout and is estimated to start and conclude during fiscal year 2026 at a cost of $36,850. The estimated cost of the entire claims and policy system replacement project is approximately $29.5 million.

Department of Human Services - Eligibility Systems Modernization Project

The committee received information from DHS regarding the eligibility systems modernization project, which is replacing the legacy eligibility determination systems with a fully integrated system that includes the federal Affordable Care Act requirements. The project includes four phases, each with separate budgets and timelines. The first phase was implemented in February 2016 at a cost of $49.8 million, including $10.7 million from the general fund. Phase 1 provides a self-service portal to assist individuals with determining eligibility under the federal Affordable Care Act requirements.

The second phase of the project, which determines eligibility for various programs, including the supplemental nutrition assistance program, temporary assistance for needy families, and the child care assistance program, is anticipated to be complete in the March 2019. The Phase 2 budget is $102.9 million, including $24.3 million from the general fund.

The third phase, which will implement the remaining Medicaid eligibility coverages for individuals who are aged, blind, and disabled, scheduled to start in October 2018 and conclude in December 2019. The Phase 3 budget is $5.5 million, including approximately $544,563 from the general fund.

The fourth phase, which will implement the low-income home energy assistance program, is scheduled to be completed in the fall of 2020. At the time of this report, a budget for Phase 4 has not been prepared.

Department of Human Services - Medicaid Management Information System

The committee received information from DHS regarding the Medicaid management information system project. The primary function of the system is the payment of Medicaid claims from health care providers for individuals enrolled in the Medicaid program. The project started in June 2006 with an original budget of $60,202,453 and an estimated completion date of April 2008. The current project budget is $113.1 million. Due to challenges with system development by the contracted vendor, the project was delayed.

The project was substantially completed in October 2015. As of September 2018, the total project cost was $105.3 million. The Department of Human Services anticipates an additional $2.9 million will be paid to vendors in 2019.

Until the system is certified by the Centers for Medicare and Medicaid Services (CMS), operations expenditures from the October 2015 "go live" date will be matched 50 percent with federal funds. When the system is certified, CMS will reimburse the state an additional 25 percent of all expenditures since October 2015 to provide a total federal match of 75 percent of project expenditures. The Department of Human Services expects the on-site certification visit from CMS to occur during the first quarter of calendar year 2019. The Department of Human Services reported 4,187,340 Medicaid claims were processed during fiscal year 2018, averaging 348,945 claims per month.

Secretary of State - File 2.0 Project

The committee received information from representatives of the Secretary of State's office regarding the File 2.0 project. The project is a business and license software system that started in October 2015 and will allow new companies to register businesses and file required reports online with the Secretary of State. The business registration, business information, and contractor licensing modules of the project will be deployed as early as October 2018, while the lobbyist module will be deployed by the end of 2018. The Secretary of State anticipates spending $2.5 million of the $2.7 million project budget. From September 2016 through August 2018, business registrations have averaged 1,655 per month with a low of 1,375 in July 2018 and a high of 2,124 in May 2017. The number of days for the Secretary of State's office to file a document has ranged from 10 to 26 days, with an average of 17 days, during this time.

Department of Public Instruction - NDFoods 2.0 Project

The committee received information from representatives of the Department of Public Instruction regarding the NDFoods 2.0 project. The NDFoods computer system was developed and managed by ITD in 2012 to manage United

States Department of Agriculture (USDA) child nutrition and food distribution programs, including program applications, claims, and USDA foods. The department reported the NDFoods 2.0 project will improve decisionmaking capabilities, staff efficiencies, and reporting processes. The project was completed in January 2018, 104.4 percent ahead of the anticipated completion date of September 2019. The total project cost was $676,020, which is $1,778,602, or 72.4 percent, less than the project budget of $2,454,622. The project was scheduled to include three phases; however, due to the ease of upgrading the system, Phases 2 and 3 were combined with the requirements of Phase 1, resulting in Phase 1 being completed $301,652 under budget and the Phase 2 and 3 budget of $1,476,950 not being needed.

PRIORITIZATION OF PROPOSED MAJOR COMPUTER SOFTWARE PROJECTS

Sections 54-35-15.2(13) and 54-59-02.1 require the SITAC to prioritize major computer software projects. The Chief Information Officer is to submit recommendations of the SITAC regarding major computer software projects to the Information Technology Committee, OMB, and the Appropriations Committees of the Legislative Assembly.

The committee received information from ITD regarding a preliminary prioritization of proposed major computer software projects for the 2019-21 biennium. Executive branch agencies internally prioritized IT projects and submitted the IT plans to ITD. The department compiled the preliminary list of the IT projects over $500,000 by funding source.

After the committee concluded its business, the SITAC met on October 30, 2018, to prioritize major computer software projects. The final list of prioritized major executive branch computer software projects proposed for the 2019-21 biennium is as follows:

Project	General Fund	Total Funds
General fund projects		
1. Information Technology Department - Statewide interoperable radio network	$53,000,000	$53,000,000
2. Information Technology Department - Cybersecurity tool set modernization	11,400,000	11,400,000
3. Information Technology Department - Unified data platform	1,000,000	1,000,000
4. Information Technology Department - North Dakota gateway portal project	6,000,000	6,000,000
5. Information Technology Department - Mainframe transition project	5,000,000	5,000,000
6. Information Technology Department - Citizen relationship management system	4,500,000	4,500,000
7. Department of Human Services - Basic care application replacement project	1,920,000	1,920,000
8. Information Technology Department - Statewide land parcel dataset project	1,060,000	1,060,000
Total general fund projects	$83,880,000	$83,880,000
Federal funds projects		
1. Secretary of State - Voting systems replacement		$9,500,000
2. Department of Human Services - Child and family services FRAME system replacement		25,000,000
3. Department of Human Services - Medicaid management information system technical stack upgrade		7,100,000
4. Secretary of State - ePoll Book implementation		3,000,000
5. Department of Human Services - Disaster supplemental nutrition assistance program replacement		2,120,000
6. Department of Human Services - Mainframe migration assessment		1,220,000
7. Department of Transportation - Roadway information management system replacement		5,590,000
8. Department of Human Services - Child and family services comprehensive child welfare information and payment system mainframe migration project		1,250,000
9. Department of Public Instruction - Early childhood integrated data system expansion		7,100,000
10. Department of Human Services - Master data management/master client index assessment		660,000
Total federal funds projects		$62,540,000
Special funds projects		
1. Department of Transportation - Driver's license system rewrite		$16,500,000
2. Department of Mineral Resources - Risk based data management system 3.0		4,040,000
3. Information Technology Department - IT service management system		2,000,000
4. Workforce Safety and Insurance - Claims and policy system - Release 7		1,700,000
5. Department of Transportation - Automatic vehicle GPS implementation		2,650,000
6. Workforce Safety and Insurance - Claims and policy system - Release 8		1,890,000
7. Workforce Safety and Insurance - Claims and policy system - Release 10		2,480,000
8. Information Technology Department - Application platform as a service implementation		1,330,000
9. Workforce Safety and Insurance - myWSI enhancement project - Release 3-4		850,000
10. Workforce Safety and Insurance - Claims and policy system - Release 9		930,000
11. Information Technology Department - Automation/orchestration platform implementation for delivery of services		900,000
12. Department of Transportation - Maintenance management system		3,850,000
13. Retirement and Investment Office - Teachers Fund For Retirement pension administration system modernization		9,140,000

Project	General Fund	Total Funds
14. Department of Transportation - Traffic data editing and analysis system rewrite		1,530,000
15. Department of Transportation - Mobile/digital driver's license project		3,150,000
Total special funds projects		$52,940,000
Total all projects	$83,880,000	$199,360,000

INFORMATION TECHNOLOGY DEPARTMENT COORDINATION OF SERVICES

Section 54-59-12 provides for the review and coordination of IT 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 IT planning, services, and major projects.

Higher Education

The committee received information from the State Board of Higher Education regarding higher education IT activities pursuant to Section 15-10-44 and 54-35-15.2. The report indicated the University System had the following major IT initiatives for the 2017-19 biennium:

- The identity access management system was completed 7.4 percent under budget and 74.1 percent behind schedule, largely due to vendor resource constraints. Actual project costs totaled $651,140 compared to a budget of $703,235. The project compiles more than 100,000 records daily, and replaced a system that was over 10 years old.
- The predictive analytics reporting project uses student data to improve student success at all 11 higher education institutions. The project was completed 28.0 percent under budget in August 2017 at a total cost of $1,036,424 compared to a budget of $1,441,195. The operations phase of the project is on hold because the nonprofit organization working on the project was acquired by a commercial company. The project also is on hold due to the timeliness of information and budget constraints. The committee was informed the SLDS may be able to accomplish everything predictive analytics reporting could accomplish, but at a lower rate.
- The Blackboard learning management project replaces learning management systems at higher education institutions with a single systemwide learning management system. The project has an estimated total cost of $2,919,203 and estimated completion date of August 2019. As of September 2018, the project is 2.5 percent under budget and 2.3 percent behind schedule. At the time of this report, seven campuses are using Blackboard, three more campuses are scheduled to begin using Blackboard during the 2019 spring semester, and one campus is scheduled to begin during the 2019 summer semester. The system is estimated to provide annual cost savings of more than $400,000.
- The Novelution Grants Administration and Management project is a modular based electronic grants administration application to provide a central repository for researchers to monitor projects and improve accuracy. As part of the project, the University of North Dakota will deploy three modules and North Dakota State University will deploy six modules. The project has an estimated total cost of $1,966,726 and estimated completion date of November 2021. As of September 2018, the project is 20.4 percent under budget and 5.9 percent behind schedule. The vendor agreement is a deliverable-based contract and, because the project was not deployed on schedule, no payment has been made as of the time of this report.
- The facilities management information system (FAMIS) cloud migration project transitions the on-premises FAMIS system to a software-as-a-service cloud-based FAMIS system. The project has an estimated total cost of $249,835 and estimated completion date of February 2019. As of September 2018, the project is 1.4 percent over budget and 6.8 percent behind schedule.

Elementary and Secondary Education

The committee received information from the Educational Technology Council (ETC), which is created by Section 54-59-17, regarding IT initiatives for elementary and secondary education. The council provides governance for EduTech and the Center for Distance Education (CDE). The council's initiatives include classroom transformation and new technology grants and approving schools' technology plans.

The Educational Technology Council has started a project called the North Dakota K-20W initiative to accomplish the vision of "every student, every school, cyber educated." The goal of the initiative is to create a comprehensive statewide approach to cybersecurity across North Dakota education systems and workforce organizations.

EduTech provides IT services and professional development to North Dakota elementary and secondary schools. EduTech continues to manage PowerSchool application upgrades and to assist faculty and staff with the implementation of Microsoft Office 365 in schools. As of July 2018, there were 112,641 active students on PowerSchool. The EduTech

pre-K-12 strategic plan summary includes a vision that all students will graduate choice ready, with the knowledge, skills, and disposition to be successful.

The committee was informed CDE continues to provide North Dakota's online distance education. During the 2017-18 school year, 8,050 courses were supported by CDE while serving 6,050 students and 173 North Dakota school districts. The course completion rate during the 2016-17 school year was 96.8 percent and was 94.4 percent during the 2017-18 school year. The Educational Technology Council reported a study of students in grades 4 through 12 revealed test scores in English, mathematics, and science increased when students had exposure to SmartLabs. As of September 2018, there are 13 CDE SmartLabs providing learning opportunities to 2,149 students.

Political Subdivisions

The committee received testimony stating the coordination of IT services between ITD and political subdivisions is essential to the efficient delivery of services. The department, through STAGEnet, provides the network connectivity, Internet access, firewall security, videoconferencing, and secure wireless access that supports the delivery of services. The department personnel meet regularly with the technology resources group of the North Dakota Association of Counties to discuss issues and strategize regarding future improvements and enhancements. The primary services provided relate to cybersecurity coordination and network service delivery through STAGEnet. Other areas of collaboration include 911 delivery coordination and basemap services, social services, clerks of courts, criminal justice information services, election system solution, Gentax, Health Alert network, the geographic information system hub, and the statewide interoperable radio network (SIRN).

OTHER INFORMATION

2019-21 Biennium Budget Request

The committee received information from ITD regarding the department's 2019-21 biennium budget request. The department's 2017-19 biennium budget included $245.1 million and 344.30 FTE positions. The department's 2019-21 biennium budget request will include a $77.3 million reduction, of which $58.9 million is considered one-time funding during the 2017-19 biennium and $18.4 million is a reduction to ongoing funding. The department is authorized 344.30 FTE positions for the 2017-19 biennium, but 17.00 FTE positions will be eliminated for the 2019-21 biennium to comply with the Governor's guidelines. Of the 17.00 FTE positions, 2.00 FTE positions will be from K-12 programs and 15.00 FTE positions will be from ITD operations. The committee was informed 23 ITD personnel have applied for the voluntary separation incentive program. The department anticipates approving 19 of the 23 applications. The department reported some of these positions will not be refilled while some positions will be rehired at lower salaries.

Statewide Longitudinal Data System Initiative

The Legislative Management assigned the committee the responsibility to receive a report from the Statewide Longitudinal Data System Committee on the status of SLDS pursuant to Section 54-59-36. The committee received information from ITD regarding the status of development of SLDS. During the 2017-18 interim, the North Dakota Choice Ready program was completed. This program is a tool to assist educators to ensure all students successfully graduate high school possessing the essential skills necessary to be ready for life. The program encourages students to strive to be postsecondary ready, workforce ready, or military ready. As of September 2018, 24,000 e-transcripts have been sent using SLDS, including 17,000 to in-state public institutions and 7,000 to private or out-of-state institutions. The Statewide Longitudinal Data System Committee recommendation for future development includes adding early childhood into SLDS and to provide reports on North Dakota college certificate attainment and employment in the state.

Emergency Services Communications Coordinating Committee

The Legislative Management assigned the committee the responsibility to receive a report from the Emergency Services Communications Coordinating Committee (ESCCC) regarding changes to the operating standards for emergency services communications pursuant to Section 57-40.6-12. The Emergency Services Communications Coordinating Committee was established in 2001 and is composed of two state and two local government representatives. The primary responsibility of ESCCC is to implement technologies that will efficiently and cost-effectively deliver 911 calls to one of the 21 North Dakota public safety answering points (PSAP). The primary funding source to provide 911-related services is through an emergency services communications system fee levied on telecommunication services in the state. All 53 counties and 1 city impose this fee. The Emergency Services Communications Coordinating Committee reported as of July 2018, 23 county and city jurisdictions charge the maximum $1.50 fee on assessed communication services while other jurisdictions charge a $1.00 fee.

The committee was informed ESCCC is focusing on Next Generation 9-1-1 progress, technology consolidation, training guidelines, and the relationship between land mobile radio or SIRN, public safety mobile broadband, and Next Generation 9-1-1. The Emergency Services Communications Coordinating Committee reported legislation may be needed to require location information when a call is received by a PSAP.

Statewide Interoperable Radio Network

The committee received information regarding the SIRN. The 2017 Legislative Assembly approved House Bill No. 1178, which requires political subdivisions to impose an additional fee of $0.50 to the fee imposed on assessed communication services, to be deposited in the newly established SIRN fund. The fiscal note for House Bill No. 1178 estimated $9.6 million of revenue would be generated for SIRN during the 2017-19 biennium. The Information Technology Department reported the updated estimate of revenue to be collected during the biennium is $7.5 million to $8.0 million. The current revenue in the SIRN fund, as of September 2018, is $4.0 million. The Information Technology Department reported expenditures incurred through August 2018 totaled $49,975. The department is negotiating with a vendor for SIRN and intends to award the contract in December 2018.

In addition to the $0.50 fee, Section 7 of House Bill No. 1178 authorized ITD to obtain a loan of up to $15 million from the Bank of North Dakota for the SIRN project. The department reports it does not anticipate borrowing funds from the Bank of North Dakota for SIRN during the 2017-19 biennium.

Section 8 of House Bill No. 1178 requires, by September 30, 2018, all North Dakota entities operating a PSAP to relinquish legal rights to any radio frequency required for the SIRN trunk system. The Information Technology Department reported 41 counties have signed the SIRN memorandum of understanding and four counties have signed letters of intent to participate in the network. Five counties have either disagreed or partially disagreed with the memorandum of understanding, two counties have not presented SIRN information to the county commissions, and one county has not responded to SIRN communication requests. The department's goal is to have all counties participate in the SIRN project; however, participation from every county is not necessary for the project to be successful.

Electronic Payment Processing System

The committee received reports from ITD regarding the electronic payment processing system related to credit card fees, which was approved by the Legislative Assembly in Sections 10 and 11 of Senate Bill No. 2021 (2017). The department reported as the public pays fees to agencies by credit card, agencies absorb the related merchant credit card fees in the agency budget. The department reported the DOT, Secretary of State, Parks and Recreation Department, Game and Fish Department, WSI, and Highway Patrol have incurred the most credit card fees, and were approved by the Legislative Assembly to participate in the electronic payment processing system. Senate Bill No. 2021 allowed these agencies to borrow from the Bank of North Dakota to pay ITD to initiate a system to allow the credit card fees to be charged to customers rather than the agency. The Bank of North Dakota finalized a contract with Chase Bank in August 2017 to initiate the new system.

The Information Technology Department reported all the selected agencies declined the initial implementation of the system. In September 2018, DOT implemented the system on self-service kiosks to charge customers a 2.5 percent fee for credit card transactions. Job Service North Dakota and the Department of Labor and Human Rights voluntarily elected to implement the system.

Health Information Technology

The committee was informed ITD is continuing to develop the North Dakota Health Information Network (NDHIN). The North Dakota Health Information Network is a public-private partnership for the secure exchange of health information that enables clinical users, such as providers, nurses, and clerical staff to easily and efficiently view information relating to a patient's electronic medical record. The North Dakota Health Information Network allows for up-to-the minute decisions and faster diagnoses while allowing users to securely exchange clinical information. The North Dakota Health Information Network expansion project will establish health information network infrastructure, provide medication information and registry connections, and allow for administrative process automation and simplification.

Funding for the NDHIN expansion project includes $40.8 million of federal funding, which is available through September 2021, the anticipated completion date of the project. Funding for federal fiscal years 2018 and 2019 is $21.9 million, of which $19.7 million is from federal funds and $2.2 million will be provided from the electronic health information exchange fund and from health care providers. The Health Information Technology Office has entered contracts with Orion Health, HealthTech Solutions, and CedarBridge Group for the project. At the time of this report, the Health Information Technology Office is working with a vendor to do a gap analysis on the changes needed to the system for the expansion project.

Mainframe Migration

According to reports to the committee, there are two primary agencies utilizing the mainframe, DHS for the child support and economic assistance applications and DOT for the driver's license system, roadway inventory management, and traffic safety systems. The Information Technology Department reported there are a few other agencies on the mainframe, but those agencies have relatively minor systems supported on the mainframe, not core processes. As more agencies transition off the mainframe, the remaining agencies become responsible for a greater share of the cost of

maintaining the mainframe. The department reported DHS and DOT pay approximately 94 percent of the fees associated with the mainframe while the agencies with minor systems hosted on the mainframe pay the remaining 6 percent.

North Dakota Voter Database

In December 2017, the committee received information from the Secretary of State's office regarding attempted breaches of the North Dakota voter database during the 2016 election cycle. During the summer of 2016, the federal Department of Homeland Security became aware of web activity searching for election system vulnerabilities. In the spring of 2017, the Department of Homeland Security reported 21 states had been the target of attempted breaches of state election systems during the 2016 election cycle. The Secretary of State's office reported while North Dakota was targeted, the election system was not breached. It is unclear who was responsible for the attempted breach, but it was likely from foreign nation-state governments.

Information Technology Department Help Desk

The committee received information from ITD regarding the ITD Help Desk, also referred to as the Enterprise Service Desk. The Help Desk has the following service objectives:

Type	Effort Until Resolved/Contained	Final Resolution
Quick fix	First call resolution - 24/7	15 minutes
Priority 1	Immediate attention - 24/7	2 hours
Priority 2	Immediate attention - 24/7	4 hours
Priority 3	Business hours	1 day
Priority 4	Business hours	3 days
Priority 5	Business hours	1 week

The Information Technology Department reported during the month of November 2017, 92.5 percent of service requests were resolved within 15 minutes, while 6.1 percent were addressed within 60 minutes, and 1.3 percent required more than 60 minutes to resolve.

County Road Signage and City Street Mapping

The committee received information from the North Dakota Association of Counties regarding county road signage and city street mapping. The association reported it is difficult to have locational or street name signage for each rural intersection due to the cost of the signage and the labor to install the signage and the ongoing costs to maintain the signage. The cost to purchase and install signs range from $120 to $160 per intersection, depending on the sign. The estimated total cost for county intersection signs is more than $5 million. The association reported GPS mapping services have reduced the need for counties to have road signage at all rural intersections, although GPS mapping requires a cell signal, which is not always available in rural settings. The Department of Emergency Services is working with 911 jurisdictions on a statewide seamless base map project to create a geographic information system that will be used to route all 911 calls in the state.

Committee Tours

In June 2018, the committee toured Microsoft Corporation in Fargo. Presentations by representatives of Microsoft included Microsoft's TechSpark program; Microsoft cloud services, security, and potential for state government; and other Microsoft Corporation initiatives. In June 2018, the committee toured DCN in Fargo. The presentation by DCN included a review of services and facilities.

INITIATED AND REFERRED MEASURES STUDY COMMISSION

Section 1 of Senate Bill No. 2135 (2017) created an initiated and referred measure study commission to study the initiated and referred measure laws of North Dakota, including:

1. The process and cost of placing initiated and referred measures on the ballot and campaigning in support of or opposition to ballot measures in North Dakota;
2. The processes used to place initiated and referred measures on the ballot in other states;
3. Whether any provision of the state constitution or state law relating to initiated or referred measures should be amended. If an amendment is warranted, the commission shall prepare a draft resolution to amend the constitution or a draft bill to amend the state law for consideration by the next legislative assembly; and
4. The effect of out-of-state funding on the initiated and referred measure process and whether limits on out-of-state funding are necessary.

Senate Bill No. 2135 required the commission to be composed of:

1. One individual appointed by the Chief Justice of the Supreme Court, who served as the commission chairman;
2. Three members of the House of Representatives appointed by the Majority Leader of the House of Representatives, and three members of the Senate, one of whom was a member of the minority party, appointed by the Majority Leader of the Senate;
3. One individual appointed as a nonvoting member by the Secretary of State;
4. Seven citizen members appointed by the Governor, one of whom must be a member of an association that represents employees and their interests;
5. One individual appointed by the Greater North Dakota Chamber;
6. One individual appointed by the North Dakota Newspaper Association;
7. One individual appointed by the North Dakota Farm Bureau; and
8. One individual appointed by the North Dakota Farmers Union.

The committee members were Surrogate Judge William A. Neumann (Chairman); Senators David Hogue, Gary A. Lee, and Erin Oban; Representatives Jim Kasper, Scott Louser, and Vicky Steiner; and Citizen Members Nick Archuleta, Governor's appointee; Brent Bogar, Greater North Dakota Chamber; Ellen Chaffee, Governor's appointee; Kirsten Diederich, Governor's appointee; Robert Hale, Governor's appointee; Pete Hanebutt, North Dakota Farm Bureau; Alvin A. Jaeger, Secretary of State; Jack McDonald, North Dakota Newspaper Association; Sara Meier, Governor's appointee; Kayla Pulvermacher, North Dakota Farmers Union; Jonathan Sickler, Governor's appointee; and Conner Swanson, Governor's appointee.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

BACKGROUND

The Constitution of North Dakota has preserved the right of the people to vote on constitutional amendments since it was adopted on October 1, 1889. In 1914 the constitution was amended to give the people of North Dakota the right to place a proposal for a new statute on the ballot if a petition supporting the proposal was signed by at least 10 percent of qualified electors in a majority of counties. Proposals for referenda on existing statutes (i.e., submitting statutes to voters for possible repeal) were subject to the same requirements. Over time, the requirements and processes for placing measures on the ballot have changed repeatedly. More than 500 measures to initiate constitutional amendments or initiate or refer statutes have been submitted to North Dakota voters.

Article III of the Constitution of North Dakota sets forth the right of individuals qualified to vote in North Dakota to initiate measures for constitutional amendments or statutes or refer statutes for repeal. To initiate a statute or constitutional amendment or refer a statute, a sponsoring committee of at least 25 qualified electors must obtain approval from the Secretary of State to circulate a petition to place the measure on the ballot. For each approved petition, the Secretary of State prepares a petition title summarizing the measure. The petition title also must be approved by the

Attorney General and printed on each copy of the petition. Only North Dakota residents may circulate petitions for signatures. Sponsoring committees may pay petition circulators.

Once petition signatures are gathered, the Secretary of State reviews the signatures or a sample of the signatures for validity. Petitions to initiate measures for statutes or to refer statutes must be signed by a number of qualified electors equal to or exceeding 2 percent of the resident population of the state at the last federal decennial census. Petitions to initiate constitutional amendments require double that number of signatures. If the Secretary of State determines there are a sufficient number of valid signatures, the measure is to be placed on the ballot in the next statewide election. The ballot language for the measure is drafted by the Secretary of State in consultation with the Attorney General. At least 90 days before the election, the Legislative Council coordinates with state agencies to determine the fiscal impact of the ballot measure. Decisions by the Secretary of State throughout the ballot measure process may be appealed to the Supreme Court. If the number of affirmative votes on a ballot measure exceeds the number of negative votes on the measure, the measure is deemed approved.

Several questions about the processes and requirements for ballot measures have arisen in recent years. For example, after voters approved a ballot measure for a constitutional amendment that was largely financed by one nonresident, some legislators wanted to examine the impact of out-of-state funding on ballot measure campaigns. Other legislators noted the constitutional and statutory provisions governing ballot measures had not been reviewed comprehensively in several years. The creation of the Initiated and Referred Measures Study Commission was intended to review the initiated and referred measure process, compare it to the processes used in other states, and make recommendations to the Legislative Management for any changes the commission deemed appropriate.

TESTIMONY AND COMMISSION DELIBERATION

The commission received extensive testimony regarding the history, processes, and requirements for initiated and referred measures in North Dakota from representatives of the Secretary of State's office. The commission was informed the constitutional provisions regarding initiated and referred measures have changed several times, and some recent measures have been controversial. The commission also received testimony regarding the processes and requirements for initiated and referred measures in other states. The commission was informed fewer than one-half of the states allow voters to initiate measures and fewer than one-half of the states allow voters to refer measures. The commission also was informed placing an initiated or referred measure on the ballot in North Dakota is easier than in most other states that allow voters to place measures on the ballot.

The commission discussed numerous aspects of the initiated and referred measure processes and requirements.

Drafting Assistance for Sponsoring Committees of Initiated Measures

The commission discussed the importance of drafting ballot measures in compliance with legislative drafting requirements. The commission also discussed recent legal and logistical problems resulting from drafting errors in approved measures. The commission said lengthy, complicated measures have become more common and are more difficult to draft correctly. The commission also discussed options for providing drafting assistance to sponsoring committees, including who should provide the assistance and whether sponsoring committees should have to accept edits provided by that person. The commission also heard testimony about drafting assistance provided in other states. The commission considered multiple bill drafts and resolution drafts regarding drafting assistance and recommends a bill draft authorizing the Legislative Management to establish a procedure to allow the Legislative Council to provide drafting assistance to sponsoring committees.

Public Officials' Approval of Petition Titles and Ballot Language

Under North Dakota Century Code Section 16.1-01.09, the Secretary of State drafts petition titles, and the Attorney General approves the titles. Under Section 16.1-06-09, the Secretary of State consults with the Attorney General to draft ballot language for measures approved to be on the ballot. A commission member proposed bill drafts limiting the number of words to 100 in petition titles and ballot language, and requiring mediation of official decisions regarding petition titles and ballot language. Members opposing the drafts expressed concerns that limiting the number of words would reduce transparency and potentially mislead voters by omitting important information. The members indicated requiring mediation would create legal and logistical problems and was unnecessary because sponsoring committees may raise concerns about petition titles and ballot language directly to the North Dakota Supreme Court. The commission member supporting the bill drafts indicated 100 words is sufficient to convey anything necessary, and sponsoring committees may not want to appeal official decisions to the Supreme Court. The commission makes no recommendation regarding the bill drafts.

Fiscal Impacts

The commission discussed the method of determining an initiated or referred measure's fiscal impact and voter awareness of the fiscal impact. The Legislative Council coordinates determinations of fiscal impact for initiated measures but not referred measures. Some commission members wanted private persons to have a role in fiscal impact

determinations. It was noted government agencies may have political motives for indicating a measure will have a large or small fiscal impact. Other commission members were of the opinion government agencies have the most reliable knowledge and data to calculate the fiscal impact of a measure. The commission recommends a bill draft to require the Legislative Council to coordinate determinations of the fiscal impact of referred measures. The commission also recommends a bill draft to require the fiscal impact statements be printed on ballots.

Limitations on the Number of Measures Permitted on a Ballot

According to the testimony, some states limit the number of measures permitted to appear on a ballot. The commission discussed whether a similar limit would be appropriate in North Dakota. Some commission members expressed concerns that several measures on one ballot can be confusing or make it difficult for voters to become fully educated on each one. Other members opposed limiting the number of ballot measures because it would infringe on the right of voters to initiate statutory or constitutional changes. The commission did not discuss bill drafts or resolution drafts on this issue.

Out-of-State Funding of Committees Supporting Ballot Measures

The commission received testimony regarding out-of-state contributions in support of recent ballot measures and relevant United States Supreme Court opinions. Section 16.1-08.1-03.1 requires sponsoring committees and other committees supporting or opposing ballot measures to report information about contributions the committees receive, and imposes additional reporting requirements for contributions from out-of-state contributors. The commission discussed a bill draft that would have eliminated the additional reporting requirements. Commission members opposing the bill draft raised concerns about nonresidents having the ability to change the state constitution or statutes by funding advertising campaigns and paying petition circulators, especially when groups of nonresidents form committees including the term "North Dakotans" in the committee name. The members also questioned whether nonresident-funded campaigns undermine the electoral power of residents and noted campaigns should be transparent about funding sources. Commission members in support of the bill draft contended sponsoring committees often need nonresident support to get measures on the ballot and approved. It was noted a ballot measure may not be approved unless residents vote for the measure. The commission recommends a bill draft to require contributions from residents to measure committees to be reported with the same level of detail as contributions from nonresidents to measure committees.

Nonresident Petition Circulators

The commission received testimony regarding employment of nonresident petition circulators in other states and discussed a resolution draft that would have amended Section 3 of Article III of the Constitution of North Dakota to allow nonresidents to circulate petitions in North Dakota if the nonresidents agreed to accept the jurisdiction of North Dakota state courts. Commission members supporting the resolution draft noted using nonresidents may be necessary to collect the required number of petition signatures. It was the opinion of commission members opposing the resolution draft that if the measures have in-state support, the sponsoring committees will be able to collect the necessary signatures using resident petition circulators. The commission makes no recommendation regarding nonresident petition circulators.

Geographic and Numeric Thresholds for Petition Signatures and Measure Approvals

The commission received testimony regarding the laws of other states with respect to the required number of signatures to place measures on ballots and the required number of affirmative votes to approve measures. The commission considered a resolution draft that would have amended the Constitution of North Dakota to require a petition to have a number of signatures equal to or greater than 10 percent of the number of votes cast for the Governor in the preceding gubernatorial election before the measure could be placed on a ballot. The commission also considered a resolution draft that would have amended the constitution to require at least 60 percent of votes cast on a measure be affirmative for the measure to be deemed approved. Commission members supporting the drafts indicated these changes would ensure broader public support for measures before the measures become law. Commission members opposing the drafts defended the current requirements as sufficient. The commission makes no recommendation regarding petition signature requirements.

Methods for Verifying Petition Signatures

The commission received testimony regarding the methods other states use to verify petition signatures and the method the Secretary of State uses to verify signatures and discussed this issue. Commission members also discussed past instances of fraudulent signatures, but did not make any proposals regarding verification of petition signatures.

Role of the Legislative Assembly

The commission received testimony and discussed the role of the Legislative Assembly in initiating measures under the current and previous versions of the constitution but did not recommend any changes on this issue. The commission discussed a resolution draft that would have given the Legislative Assembly an opportunity to enact each initiated measure without amending it. Under the resolution draft, if a measure received sufficient petition signatures, the measure would be submitted to the Legislative Assembly for at least one committee hearing followed by votes on the measure in each chamber. If the Legislative Assembly did not approve the measure, the measure would be placed on the next

general election ballot. Commission members in support of the resolution draft alleged the method would allow greater public discussion and education on measures. Commission members in opposition defended the status quo. The commission makes no recommendation regarding the role of the Legislative Assembly with respect to reviewing an initiated measure before placing the measure on the ballot.

The commission also discussed a resolution draft that would have amended the constitution to require voter-approved constitutional amendments that necessitated a certain level of spending be approved by the Legislative Assembly each biennium. If the amendments were not approved by the Legislative Assembly, the amendment would not go into effect. Commission members in support of the resolution draft asserted the change was necessary because recent measures that would have been subject to the approval requirement have had very large impacts on the state's biennial budget. It was noted the state's revenues fluctuate over time, and constitutionally mandated spending impairs the Legislative Assembly's constitutional responsibility to address those fluctuations and appropriate state funds accordingly. Commission members opposing the resolution draft argued it would have infringed on the right of voters to enact ballot measures. The commission makes no recommendation regarding the role of the Legislative Assembly in addressing spending requirements in initiated measures and resolutions.

Proposed Bill and Resolution Drafts

The commission considered 27 bill drafts and resolution drafts and approved four bill drafts for recommendation to the Legislative Management. The following chart summarizes the bill drafts and resolution drafts the commission considered.

Draft Number	Summary
House Bill No. 1035	This bill requires the fiscal impact statement for a ballot measure to be printed on the ballot.
Bill Draft No. 2	This bill draft would have required the Legislative Council to coordinate the determination of a fiscal impact for each referred measure. The Legislative Council already performs this function for initiated measures. The bill draft also would have eliminated the statutory language setting forth the specific steps the Legislative Council and state agencies must follow to determine fiscal impacts and the requirement for the Legislative Council to compare the anticipated fiscal impact with the actual fiscal impact 1 year after a measure passes.
Bill Draft No. 3	This bill draft revised Bill Draft No. 2 by reinstating the statutory language setting forth the specific steps the Legislative Council and state agencies must follow to determine fiscal impacts.
House Bill No. 1036	This bill revised Bill Draft No. 3 by reinstating the statutory language requiring the Legislative Council to compare the anticipated fiscal impact with the actual fiscal impact 1 year after a measure passes. This bill retains the requirement for the Legislative Council to coordinate the determination of a fiscal impact for each referred measure.
Bill Draft No. 5	This bill draft would have eliminated the extra campaign finance reporting requirements for contributions from out-of-state contributors.
House Bill No. 1037	This bill revised Bill Draft No. 5 by reinstating the statutory language regarding the extra campaign finance reporting requirements but makes the requirements applicable to all contributions, not only those from out-of-state contributors.
Bill Draft No. 7	This bill draft, which accompanied Resolution Draft No. 4, would have required both the Attorney General and Secretary of State to approve a petition to initiate or refer a measure. Currently, only the Secretary of State needs to approve petitions.
Bill Draft No. 8	This bill draft would have limited petition titles to no more than 100 words.
Bill Draft No. 9	This bill draft would have permitted sponsoring committees to mediate disputes over petition titles and ballot language with the Secretary of State, who would have had authority to select the mediator.
Bill Draft No. 10	This bill draft revised Bill Draft No. 9 and would have required an administrative law judge to mediate disputes between sponsoring committees and the Secretary of State.
Bill Draft No. 11	This bill draft would have made several significant changes to the processes and timelines for initiated and referred measures.
Senate Bill No. 2033	This bill resulted from oral amendments made to Resolution Draft No. 7. It authorizes the Legislative Council to provide drafting assistance to sponsoring committees pursuant to Legislative Management guidelines.
Resolution Draft No. 1	This resolution draft would have amended the Constitution of North Dakota to allow nonresidents to circulate petitions for initiated and referred measures if the nonresidents agreed to accept the jurisdiction of North Dakota state courts.
Resolution Draft No. 2	This resolution draft would have amended the Constitution of North Dakota to require each initiated measure for a constitutional amendment to be voted on at the general election following the measure's qualification for the ballot.
Resolution Draft No. 3	This resolution draft would have amended the Constitution of North Dakota to require a sponsoring committee to find a legislator to submit a proposed measure to the Legislative Council for drafting before the sponsoring committee circulated the petition for the measure. The resolution draft also would have

Draft Number	Summary
	required the Legislative Assembly to vote on the measure if it received a sufficient number of signatures. If the Legislative Assembly did not approve the measure, the measure would have been placed on the ballot at the following general election.
Resolution Draft No. 4	This resolution draft, which accompanied Bill Draft No. 7, would have amended the Constitution of North Dakota to require sponsoring committees to obtain the approval of the Secretary of State and Attorney General for measures. The Secretary of State and Attorney General would have been able to ensure measures were drafted in accordance with legislative drafting requirements but could not withhold approval for policy reasons.
Resolution Draft No. 5	This resolution draft would have amended the Constitution of North Dakota to require each initiated measure to be voted on at a general election.
Resolution Draft No. 6	This resolution draft would have amended the Constitution of North Dakota to require the Legislative Council to draft initiated measures for sponsoring committees and to require the Legislative Management to provide a procedure for the Legislative Council to do so.
Resolution Draft No. 7	This resolution draft revised Resolution Draft No. 6 by eliminating the requirement that measures be drafted by the Legislative Council, and would have allowed sponsoring committees to decide whether to seek drafting assistance from the Legislative Council.
Resolution Draft No. 8	This resolution draft would have required biennial legislative approval of expenditures necessitated by approved initiated constitutional amendments if the expenditures exceeded an amount equal to 1 percent of the general fund revenue for the previous biennium.
Resolution Draft No. 9	This resolution draft revised Resolution Draft No. 8 to provide the sponsoring committee for a measure that would have been subject to biennial approval would be required to identify a new source of funds or an increase in existing funds to cover the expenditure required by the measure.
Resolution Draft No. 10	This resolution draft would have amended the Constitution of North Dakota to require the Secretary of State to place initiated measures for constitutional amendments on the ballot only in general elections.
Resolution Draft No. 11	This resolution draft would have amended the Constitution of North Dakota to change the deadline for submitting petitions for initiated measures from 120 days before the election to 90 days before the election.
Resolution Draft No. 12	This resolution draft would have amended the Constitution of North Dakota to require the Legislative Assembly to enact legislation regarding drafting and form requirements and review criteria for petitions for initiated and referred measures.
Resolution Draft No. 13	This resolution draft would have amended the Constitution of North Dakota to require a petition for an initiated measure for a constitutional amendment to be signed by at least 10 percent of the number of votes cast for the Governor in the preceding gubernatorial election before the initiated measure could be placed on the ballot.
Resolution Draft. No. 14	This resolution draft would have amended the Constitution of North Dakota to require at least 60 percent of the votes cast on a measure for a constitutional amendment to be affirmative for the measure to be approved.
Resolution Draft No. 15	This resolution draft would have amended the Constitution of North Dakota to limit any measure for a constitutional amendment to one subject and to require the subject to be expressed clearly in the title of the petition for the measure.

COMMISSION RECOMMENDATIONS

The commission recommends House Bill No. 1035, House Bill No. 1036, House Bill No. 1037, and Senate Bill No. 2033. House Bill No. 1035 requires each measure on the ballot to be accompanied by its fiscal impact. House Bill No. 1036 requires the Legislative Council to coordinate the preparation of fiscal impact statements for referred measures. House Bill No. 1037 requires contributions to committees supporting or opposing ballot measures from residents to be reported with the same level of detail as contributions from nonresidents. Senate Bill No. 2033 allows the Legislative Council to provide drafting assistance to sponsoring committees pursuant to Legislative Management guidelines.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies:

- Section 4 of House Bill No. 1206 (2017) directed a study of the adoptive process and procedure, expenses, duration, and state tax credits and deductions associated with adoption by an identified or an unidentified adoptive parent.
- Section 3 of House Bill No. 1233 (2017) directed a study of the provisions of North Dakota Century Code which relate to firearms and weapons, for the purpose 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.
- House Concurrent Resolution No. 3003 (2017) directed a study of the impact of Marsy's Law on the statutorily provided rights of crime victims and those alleged to have committed crimes, and the criminal procedures relating to the rights of victims and criminal defendants.
- House Concurrent Resolution No. 3014 (2017) directed a study of the various legal notice and publishing requirements of all state agencies and political subdivisions, the related costs required in state and political subdivision budgets, and potential notification alternatives.

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 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 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 reports:

- 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 addressing the issue of the liability of charitable organizations that receive and disburse money handled through account wagering (Section 53-06.2-04).
- A report from the North Dakota Lottery regarding the operation of the lottery (Section 53-12.1-03).
- A report from the Department of Human Services (DHS) 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 DHS (Section 50-06-31).
- A report from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program (2017 Senate Bill No. 2203, §§ 1,2).
- A report from the Task Force on the Prevention of Sexual Abuse of Children with recommendations for state policy that would prevent child sex abuse (2017 Senate Bill No. 2342, § 1).
- A report from the State Department of Health including the findings and recommendations of the study on adding identified medical conditions to the definition of "debilitating medical condition" in its annual reports (2017 Senate Bill No. 2344, § 5).
- An annual report from the State Department of Health on the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers; and expenses incurred and revenues generated by the department (Section 19-24.1-39).

Committee members were Senators David Hogue (Chairman), John Grabinger, Diane Larson, and Janne Myrdal and Representatives Roger Brabrandt, Lois Delmore, Terry B. Jones, Karen Karls, Lawrence R. Klemin, Kim Koppelman, Jeffrey J. Magrum, Shannon M. Roers Jones, Bernie Satrom, and Luke Simons.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

IDENTIFIED OR UNIDENTIFIED ADOPTION

Background

The Department of Human Services reported 152 adoptions in the state during fiscal year 2017, including 140 special needs adoptions, 20 infant or regular adoptions, 6 international adoptions, and 6 identified parent adoptions. Section 14-15.1-01 provides definitions for "relative" and "identified adoptive parent," but Century Code does not provide a specific definition for "unidentified" adoptive parent. "Relative" means a brother, sister, stepbrother, stepsister, first cousin, uncle, aunt, or grandparent of the child by marriage, blood, or adoption and "identified adoptive parent" means "the person or persons eligible under section 14-15-03 to adopt a child and who has been selected by a birth parent to adopt a specific child." Section 14-15-03 provides the following individuals may adopt:

1. A husband and wife together although one or both are minors.
2. An unmarried adult.
3. The unmarried father or mother of the individual to be adopted.
4. A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not the adopting person's spouse, and if:
   a. The petitioner is a stepparent of the individual to be adopted and the biological or legal parent of the individual to be adopted consents;
   b. The petitioner and the other spouse are legally separated; or
   c. The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapability, or circumstances constituting an unreasonable withholding of consent.

Adoption Procedure - Unidentified Parent

Section 14-15-09(1)(j) requires a petitioner to include all reasonable fees, such as an adoption assessment, expenses for travel, medical expenses, and legal fees in the petition for adoption. After a petition is filed, Section 14-15-11 requires a licensed child-placing agency to complete an investigation as to the conditions of the minor to be adopted and of the petitioner to determine if the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor. An investigation and report is not required in cases involving a petitioner who is a stepparent or in cases in which the individual being adopted is an adult. Under Section 14-15-11(5), the court may waive the investigation and report "if the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor."

Section 14-15-13 requires the petitioner and the individual to be adopted to appear at the hearing on the petition. At the conclusion of the hearing, the court determines whether the adoption is in the best interest of the individual. The court also must make a finding as to the reasonableness of reported expenses.

Adoption Procedure - Identified Parent

Chapter 14-15.1 sets forth the legal process governing an identified parent adoption. In an identified adoption, the custody of the child passes directly from the birth parent to adoptive parent through a legal process when the birth parents relinquish their parental rights pending the final adoption of the child at a later date. Section 14-15.1-03 requires the court to set a time and place for a hearing on the petition for relinquishment of parental rights. Section 14-15.1-04 requires the report of a child-placing agency to be filed with the court before a hearing under this chapter. House Bill No. 1206 (2017) amended Section 14-15.1-04 to create a distinction between the required report of a child-placing agency in an adoption by an identified adoptive parent who is not a relative and an adoption by an identified adoptive parent who is a relative. An identified parent who is a relative must have written character statements from three adult witnesses describing various characteristics, such as the emotional maturity and stability of the home environment. An identified adoptive parent who is not a relative must complete a preplacement adoption assessment.

Section 14-15.1-05 requires a report of agreements, whether oral or written, and a full accounting of any disbursement of anything of value to be filed with the court. Within 180 days after entry of an order for relinquishment under Chapter 14-15.1, the identified adoptive parent must file a petition for adoption under Chapter 14-15.

Financial Impact

In North Dakota, private adoption agencies facilitate infant adoptions, the adoption of children from the foster care system, and foreign-born adoptions. According to DHS, the state implements the Adults Adopting Special Kids Program, which contracts with three private agencies to provide adoption services for children adopted from the foster care system. The state does not provide specific tax exemptions or credits relating to adoption.

Fees charged by private adoption agencies in the state range from $5,000 to $11,000 or more for domestic and intercountry adoptions. Adoption services provided through the Adults Adopting Special Kids Program are available for a modest fee.

Although North Dakota does not offer state tax credits or deductions relating to adoptions, federal or state subsidies may be available to assist families adopting a child with special needs. In North Dakota, a child may be designated as a child with "special needs" for the purposes of an adoption subsidy through DHS if the child is over the age of 7; is a member of a minority race; is a member of a sibling group placed together for adoption; is diagnosed with a physical, mental, or emotional disability; or has been determined to be at high risk for a physical, mental, or emotional disability by a licensed physician. The state also must determine a reasonable but unsuccessful effort was made to place the child without a subsidy, unless the child is being placed with a family that has a significant relationship to the child. Children placed through the state, a county social service officer, a licensed agency in the state, or a North Dakota tribe may be eligible for a subsidy. A subsidy may be a monthly payment, medical assistance, or reimbursement of nonrecurring adoption expenses. Private (nonagency) adoptions do not qualify for a subsidy.

Testimony and Committee Considerations

In its study of adoption, the committee received information and testimony from several adoptive parents, a representative from DHS, and a representative from an adoption agency. The committee's deliberations focused on whether any unnecessary burdens exist for individuals looking to adopt a child through an identified or unidentified adoption.

Although House Bill No. 1206 (2017) amended Chapter 14-15.1 to allow for more limited involvement of the child-placing agency in relative adoptions, a representative from DHS indicated an agency report still includes an assessment and recommendation, the criminal history record of the identified adoptive parent and any adult living in the home, written credible character statements from three adult witnesses, and the medical and social history of the birth parent, including an assessment regarding the birth parent's understanding and acceptance of the action. The committee received considerable testimony indicating adoptions within North Dakota and across state borders are running very smoothly. Testimony also indicated the legal process to terminate parental rights under Section 14-15-19 can be a lengthy process and birth parents find it difficult to move on emotionally when the birth parents have to attend a hearing months after giving up physical custody of a child.

The committee received testimony regarding the average cost of adoption. Testimony generally indicated although adoption costs vary between $5,000 and $17,000, identified adoptions tend to cost more because of the additional paperwork required. Testimony also indicated the adoption process is working well as administered.

The committee considered a bill relating to the reports of a child-placing agency. The bill removes a requirement for a statement of affidavit confirming the information in the child-placing agency report is accurate. The committee was informed the affidavit is unnecessary because the adoption application contains the same statement.

Recommendations

The committee recommends House Bill No. 1038 to remove the requirement for a statement of affidavit confirming the information in the child-placing agency report is accurate.

FIREARMS AND WEAPONS PROVISIONS IN TITLE 62.1

Background

Title 62.1 sets forth the provisions relating to weapons, specifically the possession of weapons, handguns, concealed weapons, machine guns, automatic rifles, silencers, and bombs.

Chapter 62.1-01

Chapter 62.1-01 sets forth the definitions applicable for Title 62.1, the general provisions requiring the forfeiture of a dangerous weapon or firearm by a person arrested and convicted of a crime, and limits the authority of a political subdivision from enacting an ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition, which is more restrictive than state law.

Chapter 62.1-02

Chapter 62.1-02 provides the specific instances under which an individual may not possess a firearm and when an individual's right to possess a firearm may be restored.

Chapter 62.1-03

Chapter 62.1-03 sets forth specific regulations related to the use and possession of handguns.

Chapter 62.1-04

Chapter 62.1-04 sets forth the law relating to carrying a concealed weapon.

Chapter 62.1-05

Chapter 62.1-05 relates to the possession and sale of machine guns, automatic rifles, silencers, and bombs.

2017 Legislation

In 2017, 13 bills related to firearms were introduced, 8 of which were passed by the Legislative Assembly and signed by the Governor.

Legislation Adopted

- House Bill No. 1169 allowed an individual who is not otherwise prohibited from possessing a Class 2 firearm and dangerous weapon license and who has been a resident of the state for at least 1 year to carry a concealed firearm. The bill also allows an individual to show proof of a valid driver's license or nondriver identification card on a mobile device upon demand by a law enforcement officer.
- House Bill No. 1233 adds a federal, magistrate, or judicial referee to the list of individuals exempt from Section 62.1-02-05, which prohibits the possession of a firearm at a public gathering. The bill allows an individual who has a Class 2 concealed weapons license to upgrade to a Class 1 concealed weapons license within 5 years from the date the Class 2 license was issued and upon successful completion of the testing required for a Class 1 license. The bill also allows an individual who has a valid Class 1 firearm license to request to convert the license to a Class 2 firearm license before the expiration of the Class 1 firearm license.
- House Bill No. 1273 removes the requirement for a church to notify local law enforcement of any individual the church authorizes to possess a concealed weapon on church property and limits the liability of a church or place of worship for any injury, death, or damage to property caused by an individual permitted to carry a dangerous weapon.
- House Bill No. 1279 allows an individual to store a firearm or dangerous weapon in a building owned or managed by the state or a political subdivision if the individual resides in the building, the storage is inside the residential unit, and the storage of the firearm or dangerous weapon was approved by the state, governing board, or designee.
- House Bill No. 1395 amends the definition of "dangerous weapon" to include a device that uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident. The bill amends the definition of law enforcement officer to include a retired public servant who was authorized by law or a government agency for at least 10 years to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.
- House Bill No. 1402 allows a law enforcement officer to arrest an individual subject to a protection order and who failed to surrender any firearm or dangerous weapon.
- Senate Bill No. 2097 adds public security personnel to the list of individuals allowed to carry firearms at a public gathering.
- Senate Bill No. 2125 adds a correctional officer employed by the Department of Corrections and Rehabilitation or by a correctional facility to the individuals allowed to carry firearms at a public gathering.

Legislation Not Passed

- House Bill No. 1190 would have allowed an individual authorized by the Chief Justice of the Supreme Court, Governor, Speaker of the House, or President Pro Tempore of the Senate to carry a concealed weapon on property owned or leased by the state.
- House Bill No. 1278 would have amended the definition of "government building" for purposes of possession of a firearm to specify a "government building" is a building that limits access by using metal detection devices and is staffed by armed personnel. The bill also would have clarified a public gathering as it relates to possessing a firearm or dangerous weapon.
- House Bill No. 1310 would have created a pilot program for armed first responders in schools.

- House Bill No. 1391 would have created an exception from all federal regulations for any firearm, firearm accessory, or ammunition produced or manufactured in the state.
- Senate Bill No. 2139 would have allowed an individual who carries a concealed firearm or dangerous weapon to produce, within 10 days of a request of by a police officer, evidence of a valid license to carry a concealed weapon.

Testimony and Committee Considerations

In its study of Title 62.1, the committee received information and testimony from representatives of the Attorney General's office, a representative from the Game and Fish Department, and several members of the public. The committee's deliberations focused on which sections of Title 62.1 needed to be amended to address the inconsistencies and eliminate confusion.

The committee received testimony identifying inconsistencies in Title 62.1 relating to the passage of House Bill No. 1169 (2017), specifically whether an individual who is permitted to carry a firearm or dangerous weapon concealed under Chapter 62.1-04 also is permitted to carry a loaded firearm in a motor vehicle under Section 62.1-02-10. A representative from the Game and Fish Department indicated there is confusion relating to how the restrictions in Section 62.1-02-10 apply to an individual who is hunting. A representative from the Attorney General's office indicated an inconsistency in Section 62.1-02-01.1, relating to whether the state has the jurisdiction to restore an individual's right to possess a firearm when the individual's right was taken by another state or the federal government.

The committee considered a bill relating to the possession of firearms. The bill consists of 11 sections that amend language in an effort to address inconsistencies and eliminate confusion.

Section 1 of the bill removes duplicative language relating to the definition of a retired law enforcement officer and the language relating to a felon possessing a firearm from the definition of "firearm" in Section 62.1-01-01. Section 3, which amends Section 62.1-02-01, also revises the same language restricting a felon from possessing a firearm.

Section 4 of the bill addresses the inconsistency in Section 62.1-02-01.1, relating to whether the state or federal government has jurisdiction to reinstate an individual's right to possess a firearm by specifying the petition to reinstate the right must be filed in the venue where the rights were revoked.

Sections 8 and 10 of the bill address inconsistencies created with the passage of House Bill No. 1169 (2017) by clarifying the restrictions relating to open carry of a handgun and carrying a loaded firearm in a vehicle do not apply to an individual who is not otherwise precluded from carrying a concealed firearm or dangerous weapon under Chapter 62.1-04.

Section 9 of the bill amends Section 62.1-02-13 to add the exceptions that apply to the restriction on carrying a firearm at a public gathering in Section 62.1-02-05 to the prohibition of the possession of a secured firearm by an employer at any public or nonpublic elementary school, middle school, or high school property.

Section 11 of the bill amends Section 62.1-04-02 by creating language that provides a distinction between a Class 1 and Class 2 firearm and dangerous weapon license.

Although there was discussion regarding whether the statutory changes were necessary, the committee was informed the changes would not be substantive in nature.

Recommendations

The committee recommends Senate Bill No. 2034 to make Title 62.1 more readable and to remove inconsistencies.

MARSY'S LAW

Background

At the general election in November 2016, the voters of the state approved an initiated constitutional measure referred to as "Marsy's Law." Marsy's Law was named after Dr. Henry T. Nicholas' sister, Marsalee Nicholas, who was stalked and killed by her ex-boyfriend in 1983. Dr. Nicholas was the sole reported contributor to the campaign and contributed over $2.3 million. Marsy's Law, codified as Section 26 of Article I of the Constitution of North Dakota, provides 19 rights afforded to victims. Any court in the state in which the criminal proceeding is being heard, the prosecuting attorney, and criminal justice agencies are subject to and must enforce Marsy's Law.

Section 16.1-01-17 requires the Legislative Management to gather information on the estimated fiscal impact of initiated measures. At the September 29, 2016, meeting of the Legislative Management, the Office of Management and Budget estimated the fiscal impact of Marsy's Law to be $1,156,846 for the remainder of the 2015-17 biennium and $3,966,330 for the 2017-19 biennium.

Under the constitutional provision, a "victim" is defined as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed." Pursuant to Section 26, victims are entitled to the following rights, beginning at the time of victimization:

- The right to be treated with fairness and respect for the victim's dignity.
- The right to be free from intimidation, harassment, and abuse.
- The right to be reasonably protected from the accused and any person acting on behalf of the accused.
- The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions.
- The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.
- The right to privacy, which includes the right to refuse an interview, deposition, or other discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interaction to which the victim consents.
- The right to reasonable, accurate, and timely notice of, and to be present at, all proceedings, involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication, and disposition, and any proceeding during which a right of the victim is implicated.
- The right to be promptly notified of any release or escape of the accused.
- The right to be heard in any proceeding involving the release, plea, sentencing, adjudication, disposition, or parole, and any proceeding during which a right of the victim is implicated.
- The right, upon request, to confer with the attorney for the government.
- The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence or disposition investigation or compiling any presentence investigation report or recommendation regarding, and to have any such information considered in any sentencing or disposition recommendations.
- The right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any presentence report or plan of disposition when available to the defendant or delinquent child.
- The right, upon request, to the prompt return of the victim's property when no longer needed as evidence in the case.
- The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct.
- The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.
- The right, upon request, to be informed of the conviction, adjudication, sentence, disposition, place, and time of incarceration, detention, or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody or commitment.
- The right, upon request, to be informed in a timely manner of all postjudgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.
- The right, upon request, to be informed in a timely manner of any pardon, commutation, reprieve, or expungement procedures, to provide information to the Governor, the court, the pardon board, and other authority in these procedures, and to have that information considered before a decision is made, and to be notified of such decision in advance of any release of the offender.
- The right to be informed of these rights, and to be informed that victims can seek the advice of any attorney with respect to their rights.

Chapters 12.1-34 and 12.1-35 also provide for the fair treatment of victims and witnesses and child victim and witness fair treatment standards. The 65th Legislative Assembly passed 2017 House Bill No. 1194, which amended Chapter 12.1-34 to be consistent with Marsy's Law. The definitions of "family member" and "victim" in Section 12.1-34-01 were amended to include a grandchild and any person with a relationship to the victim which is substantially similar to a relationship specified, and to specify the term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

Section 12.1-34-02 was amended in House Bill No. 1194 to provide a victim has the right to prevent the disclosure of confidential or privileged information about the victim or the victim's family and to be notified of any request for identifying information or confidential or privileged information about the victim or victim's family. This section was amended to specify a victim must be allowed to confer with the prosecuting attorney and victims and witnesses must be informed of the right to seek the advice of an attorney. House Bill No. 1194 also updated Section 12.1-34-06 to require the Attorney General to maintain a statewide automated victim notification system and to require the Attorney General to develop a Marsy's card, which is required under the constitutional amendment.

Testimony and Committee Considerations

In its study of Marsy's Law, the committee received information and testimony from representatives of the Attorney General's office, local law enforcement, and the Ward County State's Attorney. The committee's deliberations focused on whether the implementation of the law resulted in unforeseen negative consequences.

The committee received neutral testimony with a consensus suggesting there has not been enough time since the implementation of Marsy's Law to fully understand the impacts. A representative from the Bismarck Police Department indicated Marsy's Law has not had an impact on the day-to-day operations of the department and noted there have been 11 instances in which a victim has invoked any of the rights provided in Marsy's Law. The testimony also indicated some confusion amongst various agencies regarding whether a victim must affirmatively invoke the right to privacy. A representative from the Ward County State's Attorney's office indicated although victims have a right to prevent disclosure of information, the victim's contact information is required so the prosecutor can contact the victim after an arrest to inform the victim of upcoming hearings and to allow a victim to opt in or out of Marsy's Law.

The committee received testimony regarding the strain on witness advocates, law enforcement, and state's attorneys as a direct result of Marsy's Law because of the time required to redact records. Testimony generally indicated redacting records is extremely time consuming because each document must be redacted by hand and in some cases a single incident results in thousands of pages to review.

Conclusion

The committee makes no recommendation with respect to Marsy's Law.

LEGAL NOTICE AND PUBLISHING REQUIREMENTS

Background

Section 46-05-01 requires newspapers in the state to meet three qualifications before the newspaper is qualified to publish a legal notice or any matter required by law to be printed or published in some newspaper in the state. The qualifications include being in circulation for at least 1 year, having at least 150 subscribers, being nonsectarian and printed in English, and having complied with the federal laws governing mailing privileges for at least 1 year. Section 46-05-03 requires the Office of Management and Budget to compute a standard price on all legal notices, which are published widely, such as ballots, insurance statements, and official proclamations. Section 46-05-06 provides any person that violates the printing requirements is liable to a fine of at least $25 and may be required to forfeit all proceeds from the unlawful printing.

Section 46-06-01 requires the electors of each county to select one newspaper, every 4 years, to be the official newspaper. Section 46-06-02 provides "a newspaper is qualified to serve as an official newspaper if it meets all the requirements of a legal newspaper set forth in section 46-05-01 and maintains its principal editorial office within the county in which it is a candidate for official newspaper." Section 46-06-02 also provides if a county does not have a newspaper in which the principal editorial office also is located in the county, a newspaper published in an adjoining county with general circulation in the original county is qualified to serve as that county's official newspaper.

Testimony and Committee Considerations

In its study of legal notice and publishing requirements, the committee received testimony from a representative of the Office of Management and Budget, a representative from the North Dakota League of Cities, a representative from the North Dakota Newspaper Association, a representative from the North Dakota Association of Counties, and various members of the public. The committee received conflicting testimony as to whether legal notices should continue to be published in the newspaper at a cost to the citizens.

Representatives from the North Dakota League of Cities and the North Dakota Association of Counties indicated a desire among political subdivisions to eliminate the requirement that legal notices be printed in the newspaper and instead be published on the corresponding website of each political subdivision or through the use of social media. Testimony indicated cities and counties with larger populations already utilize electronic means to provide notice to citizens. The committee received information from the North Dakota Association of Counties and OpenGov indicating all counties could participate in one software system through which an individual could compare one county's budget to another or see the big picture.

The committee received testimony from the North Dakota Newspaper Association indicating public notice spending among cities, counties, school districts, and state agencies for 1 year totaled just under $2 million. Testimony also indicated newspaper readership remains steady, and newspaper websites are among the top viewed. A representative from the Office of Management and Budget indicated the negotiated fee structure for legal notices applies to all government entities subject to notice publishing requirements.

The committee considered a bill relating to notice and publication requirements. The bill draft includes revisions of the top five public notice requirements of the over 140 public notices counties publish. The revision shifts the notice requirements from the county extension agent to the commodity group holding an election.

Recommendations

The committee recommends Senate Bill No. 2035 to revise the top five notice requirements and shift the notice requirements from the county extension agent to the commodity group holding an election.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of 12 members. The primary function of the commission is to represent North Dakota in the Uniform Laws Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws. The Uniform Laws Commission consists of representatives of all states, and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Management for its review and recommendation during the interim between legislative sessions. The commission presented these recommendations to the committee:

- Uniform Family Law Arbitration Act, which the ULC approved in 2016. States' laws vary when it comes to arbitrating family law matters, such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. The Act is based in part on the Revised Uniform Arbitration Act (RUAA), though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as standards for arbitration of child custody and child support, arbitrator qualifications and powers, and protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states. The Act has been enacted in two states. The commission recommends the North Dakota Supreme Court Joint Procedure Committee consider adopting the appropriate portions of this Act in the form of court rules.
- Uniform Nonparental Child Custody and Visitation Act, which the ULC approved in 2018. The Uniform Nonparental Child Custody and Visitation Act addresses the rights of third parties other than parents to custody of or visitation with a child. Those rights also are affected by the decision of the Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000), which held courts must give deference to decisions of fit parents concerning the raising of children, including concerning grandparents' visitation rights. The Act recognizes a right to seek custody or visitation for two categories of individuals--nonparents who have served as consistent caretakers of a child without expectation of compensation, and other nonparents who have a substantial relationship with a child and who demonstrate denial of custody or visitation would result in harm to the child.
- Revised Uniform Law on Notarial Acts, Amendment, which the ULC approved in 2018. The amendment to the Revised Uniform Law on Notarial Acts (RULONA) authorizes notaries public to perform notarial acts in the state in which the notaries are commissioned for remotely located individuals using audiovisual communication technology regardless of where the individual may be located. This amendment is not limited to foreign-located individuals, it extends the authority to any remotely located individuals. This amendment was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audiovisual technology. The ability of notaries public to perform notarial acts by audiovisual technology is being promoted by the American Land Title association and the Mortgage Bankers Association. These associations have prepared a Model On-Line Notary Act that contains provisions very similar to these RULONA amendments, but which are not incorporated into the framework of RULONA.
- Uniform Unsworn Domestic Declarations Act, which the ULC approved in 2016. The purpose of the Uniform Unsworn Domestic Declarations Act is to permit the use of unsworn declarations made under penalty of perjury

in state courts. Under the Act, unsworn declarations may be used in lieu of affidavits, verifications, or other sworn court filings if the declarations were made under penalty of perjury and use substantially similar language to the model form provided. The Act builds upon the Uniform Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the United States, which North Dakota enacted in 2011. The Uniform Laws Commission recommends states that have the UUFDA enact the Uniform Unsworn Domestic Declarations Act and states that have not enacted UUFDA enact the Uniform Unsworn Declarations Act. The Uniform Unsworn Domestic Declarations Act has been enacted in South Dakota.

Conclusion

The committee makes no recommendation with respect to the recommendation of the North Dakota Commission on Uniform State Laws.

TECHNICAL CORRECTIONS

The committee continued the practice of reviewing Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. The committee considered a bill draft to make the following changes or corrections:

- Section 4.1-45-22.1. The section, relating to State Fair Association operations and maintenance costs, was inadvertently codified as Section 4.1-55-22.1 in the 2017 agriculture law rewrite bills. Chapter 4.1-55 relates to the Seed Commission. Chapter 4.1-45 provides for the regulation of the State Fair Association.
- Section 4.1-55-22.1. This section relates to state fair operations and maintenance costs. The section, which was part of the agriculture law rewrite, was inadvertently codified in Chapter 4.1-55, relating to the Seed Commission. The proper codification is Section 4.1-45-22.1.
- Sections 6-09.8-04, 6-09.11-02, and 61-21.1-02. These sections, which reference the Agricultural Development Act in Chapter 4-36, were inadvertently omitted in the repealer sections of the 2017 agricultural law rewrite bills. Chapter 4-36 is obsolete and was repealed by 2017 Session Laws Chapter 61, § 13.
- Section 21.1-31.2-01(7). 2013 Session Laws Chapter 104, § 11 increased the fine for a Class A misdemeanor from $2,000 to $3,000. 2017 Session Laws Chapter 164, § 2 changed the maximum imprisonment for a Class A misdemeanor from 1 year to 360 days. In both instances, the language required to be included in a disorderly conduct restraining order for a violation of the order under Section 12.1-31.2-01 was not changed.
- Sections 14-09-00.1 and 14-09-06.2. 2007 Session Laws Chapter 131, §1 removed the definition of "harm" in Section 50-25.1-02. Section 3 of this bill draft restores the language of the definition referenced in Section 14-09-06.2 to the definitions applicable to Chapter 14-09.
- Section 15-08.1-09. This section authorizes a continuing appropriation from the strategic investment and improvements fund (SIIF) of all principal and interest to the common schools trust fund on any loans from the fund to the developmentally disabled loans fund program Nos. 2 and 3. The authority ceases when all loans are repaid. Because all loans have been repaid, the section is obsolete.
- Sections 27-20-30.1(2) and 27-20-45(1). These provisions reference Section 27-20-21, which was superseded by Rule 3 of the North Dakota Rules of Juvenile Procedure on March 1, 2010.
- Sections 43-62-01 and 43-62-15. 2017 Session Laws Chapter 295, § 3 removed the term "limited x-ray machine operator" from Section 43-62-03 and reinserted the term in Sections 43-62-01 and 43-62-15; however, in doing so, the term was reinserted incorrectly.
- Section 57-02-08.6. This section references "this program" without specifying the program. Sections 57-02-08.4 and 57-02-08.5 provide for a wetlands tax exemption and payment.
- Section 57-38-30.3(7). Section 57-38-30.3(7)(l), which was expired by 2017 Session Laws Chapter 399, eliminated the previous angel fund investment tax credit and replaced it with an angel investor tax credit. Section 57-38-30.3(7)(o) was expired by 2017 Session Laws Chapter 445, § 4.
- Section 57-60-14. The changes to this section remove expired dates for fund allocations to certain funds.

Recommendation

The committee recommends Senate Bill No. 2036 to make technical corrections throughout Century Code.

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 2017 and August 2018. 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 2017 and August 2018.

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.

In the 2017 fiscal year, the commission provided legal counsel services in over 15,200 cases, more case assignments than in any year prior. The report indicated this number included 433 Dakota Access Pipeline-related assignments; however, the number of serious Classes AA, A, and B felony cases remains high and continues to increase. The report also indicated the more serious cases take more attorney time and require additional private investigators and other experts resulting in higher costs. It was noted the number of appeals also have increased, resulting in additional costs.

The commission's 2015-17 budget was insufficient to sustain the agency though June 30, 2017. House Bill No. 1024 (2017) authorized $189,000 from SIIF to defray the commission's expenses up to June 30, 2017, and granted $1,027,000 in spending authority for Dakota Access Pipeline-related expenses incurred after June 30, 2015 and ending June 30, 2019. The commission did not need the $189,000 SIIF appropriation and the unspent funds were transferred back to the fund. The commission's budget for 2017-19 biennium consists of $17,983,876 from the general fund, $1,919,147, from the commission's special fund, and the remaining spending authority of $950,242 for costs of the Dakota Access Pipeline case assignments. The special fund consists of statutory fees paid by defendants, which include the court administration fee, an indigent defense/facility improvement fee of $100, and the $35 indigent defense application fee from criminal cases. According to the report, Marsy's Law has impacted the commission because the application fee and indigent defense/facility improvement fee are no longer the first priorities for collection among fines and fees ordered by the court to be paid.

NORTH DAKOTA RACING COMMISSION

The committee received a report from the Director of the North Dakota Racing Commission pursuant to Section 53-06.2-04. The commission's primary responsibilities are to regulate live and simulcast races as well as to license all 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.

In the 2017 fiscal year, the account deposit wagering companies produced $698,812,892 and the account deposit wagering is projected to generate approximately $700,000,000 for the 2018 fiscal year. The report indicated as a result of the increased revenues, the commission is completely self-funded and returned $615,433 to the general fund in the 2015-17 biennium, which was $227,612 over the general fund appropriation for the biennium. 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 operations:

- The Commission has entered a memorandum of agreement with the Thoroughbred Racing Protective Bureau under which the organization conducts a background check on prospective account deposit wagering companies and their principals before taking any action on an application. A license may not be 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 company applications are reviewed and approved by the Attorney General to ensure full compliance with state and federal law.
- Account deposit wagering employees are required to submit to a Federal Bureau of Investigation background check through the Bureau of Criminal Investigation before beginning employment.
- The commission has contracted with the pre-eminent pari-mutuel auditing company CHRIMS, Inc., to provide independent monthly auditing of all account deposit wagering companies.

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. The statutory tax structure of the commission requires all income resulting from account deposit wagering company operations directly or indirectly be returned 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 subsequent 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 the state 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 indicated the North Dakota Horse Park is facing very serious difficulties due to the City of Fargo levying additional special assessments on the property. The Racing Commission and the Horse Park are working to identify ways to mitigate the additional payments.

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 in convenient locations, create effective annual marketing plans, provide quality customer service to retailers and players, and control operating expenses.

For the 2017-19 biennium, the lottery had a fixed appropriation of $1,805,200 for salaries and benefits for 10 full-time equivalent (FTE) positions, and $3,531,597 for operating expenses, totaling $5,336,797. 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, 1 FTE position in the Information Technology Division, and 1 FTE position in the Finance and Administration Division of the Attorney General's office. The appropriation also funds 2 part-time draw operators.

The lottery conducts five multi-state games--Powerball, 2by2, Mega Millions, Lucky for Life, and Lotto America. The Powerball game was launched on March 25, 2004; 2by2 on February 2, 2006; Mega Millions on January 31, 2010; Lucky for Life on January 31, 2016; and Lotto America on November 12, 2017. 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 1:24.87. The Hot Lotto game ended October 28, 2017.

For the 2017-2019 biennium, the lottery projected sales of $60 million and transfers of $16,485,000 ($15 million - state general fund; $640,000 - compulsive gambling prevention and treatment fund; and $845,000 - multijurisdictional drug task force grant fund). Unaudited ticket sales through February 2018, the first 8 months of the fiscal year, were $21.8 million. This amount reflected a $2.99 million increase in sales or a 16 percent increase compared to the same period last year. The lottery is on track to meet projected sales of $30 million and transfers of $8,242,500 for the 1st year of the biennium.

During the 2017-19 biennium, the lottery has done or has plans to relaunch the Mega Millions game with new features; end the Hot Lotto game; launch the Lotto America game to replace Hot Lotto; launch a mobile device application; rebrand the subscription service with a new name "Pick & Click"; increase subscription sales; build membership in the Players Club that rewards players for the continued patronage; develop and conduct innovative marketing promotions and public awareness campaigns; continue to review and enhance security policies and procedures to ensure the integrity and fairness of its operations; and celebrate the lottery's 15th anniversary.

The lottery must partner with one or more other government-authorized lotteries to conduct a game. This restriction generally limits the lottery to games sponsored by the Multi-State Lottery Association. Because the Multi-State Lottery Association may not have a broad range of games available to fulfill the lottery's desired product mix in the future, the report indicated if the Multi-State Lottery Association were to disband, the lottery may not have an adequate number of games to continue operation.

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. Since 2007, the Department of Corrections and Rehabilitation has provided a variety of security services, including security training, perimeter surveillance, emergency response, and security consultation. Over the past 24 months, 22 hospital staff received 660 hours of classroom-based security training. Another 10 staff received additional web-based security training. According to the report, 24-hour

perimeter surveillance occurs through camera and a roving officer. In addition, the James River Correctional Center Security Director provides security consultation for environmental and procedural improvements to the sex offender treatment program.

STATE DEPARTMENT OF HEALTH ON IMPLEMENTATION OF MEDICAL MARIJUANA

The committee received a report from the State Department of Health, as required by Section 19-24.1-39 and Section 5 of Senate Bill No. 2344 (2017), regarding the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers, expenses incurred and revenues generated by the department and the findings and recommendations of the study on adding identified medical conditions to the definition of "debilitating medical condition."

In November 2016, an initiated measure, known as the "North Dakota Compassionate Care Act," was approved by voters. On January 26, 2017, the provisions of the North Dakota Compassionate Care Act were suspended through legislation passed by the Legislative Assembly. On April 18, 2017, a new state law became effective requiring the Department of Health to establish and implement a medical marijuana program allowing for the production and processing, sale and dispensing of usable marijuana, and medical use of marijuana.

The report indicated the department has been committed to implementing a well-regulated program that protects the health and safety of qualifying patients and the public. Section 19-24.1-12 provides the department is to register no more than two manufacturing facilities and eight dispensaries unless the department determines additional entities are necessary to increase access to usable marijuana by registered qualifying patients and registered designated caregivers. According to the report, an open application period for manufacturing facilities started in March 2018, and 19 applications were received. Following an evaluation of nine complete applications, two entities were selected to move forward with the registration process.

The department has established eight regions in the state where dispensaries may be located. Regions are comprised of a 50-mile radius from certain cities. On July 10, 2018, an application period was opened to accept applications from entities to become a registered dispensary in the Bismarck/Mandan region and in the Fargo region. The selection of an applicant to move forward in the registration process in each region is anticipated to be complete near the end of September 2018. The report indicated an application period for the Williston and Grand Forks regions will be complete by the end of December 2018, and the application procedure for remaining regions is expected to occur in January 2019. By the end of October 2018, the department anticipates the applications for qualifying patients and designated caregivers will be available.

The report indicated the department's review of the debilitating medical conditions for the state's program included are also in several of the other states' programs. Although the department identified medical conditions included in other states' programs which are not specifically listed in the Century Code, symptoms associated with specific medical conditions identified in other states still may allow an individual to qualify to be a registered qualifying patient in the state. The report concluded the department does not have recommendations for changes to the law regarding debilitating medical conditions.

REPORT ON HUMAN TRAFFICKING VICTIMS TREATMENT AND SUPPORT SERVICES GRANT PROGRAM

The committee received a report from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program. The 65th Legislative Assembly approved an appropriation to provide one-time funding for treatment and support services for victims of human trafficking. The report indicated of the $935,000 in grant funds that have been administered through the Attorney General's office, $124,000 is from the general fund and the remainder is from the Department of Trust Lands. According to the report, funds are to be awarded through a competitive process and given to organizations that demonstrate involvement in providing prevention and treatment services related to human trafficking victims, in coordination with state and local governments. Grant funds are not permitted to be awarded directly to nongovernment victim or witness assistance programs and domestic violence programs, but a grantee may contract for services from such an organization. The report indicated the three grant recipients were the only applicants this biennium and the carryover funds from the 2015-17 biennium were awarded during the 2017-19 grant period.

According to the report, human trafficking funds may be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice for development and implementation of direct care, emergency and long-term crisis services, residential care, training for law enforcement and victim service providers, programs promoting positive outcomes for victims, and support of advocacy services. Grant funds may not be used to supplant state and local funds or for lobbying, research projects, fundraising, construction or remodel projects, or providing direct services or training out of state.

TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN

The Task Force on the Prevention of Sexual Abuse of Children was created by Senate Bill No. 2342 (2017) for the purpose of gathering information concerning child sex abuse throughout the state, receiving reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations, creating goals for state policy that would prevent child sexual abuse, and providing policy recommendations. The task force was composed of representatives of state agencies, the Legislative Assembly, nonprofit entities focused on children's health and well-being, Indian tribes, and law enforcement. The task force identified a lack of tribal and law enforcement data as each tribe has its own child welfare data system to report child abuse and neglect and policy recommendations will be presented during the 66th Legislative Session.

JUSTICE REINVESTMENT COMMITTEE

The Justice Reinvestment Committee was assigned three studies:

- Senate Concurrent Resolution No. 4003 (2017) directed a study of the juvenile justice process, the appropriate age when a juvenile is considered capable of committing a criminal offense, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.
- House Concurrent Resolution No. 3002 (2017) directed a study of the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from the Department of Corrections and Rehabilitation (DOCR) to the Attorney General.
- Section 11 of Senate Bill No. 2015 (2017) directed a study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system, which must include caseload data, any recognized savings to DOCR, and an overview of the training requirements for contract behavioral health service providers.

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

- A report from DOCR and the Supreme Court regarding the progress of the justice reinvestment initiative (Section 20 of 2017 House Bill No. 1041).
- A report from the Justice Reinvestment Oversight Committee before July 1, 2018, of the findings and recommendations of the study of implementation of justice reinvestment policies in the state and any legislation required to implement those recommendations (Section 14 of 2017 Senate Bill No. 2015).

Committee members were Senators Kelly M. Armstrong (Chairman), Dick Dever, John Grabinger, Dave Oehlke, Arne Osland and Representatives Jake G. Blum, Karla Rose Hanson, Pat D. Heinert, Tom Kading, Karen Karls, Lawrence R. Klemin, Lisa Meier, Jon O. Nelson, Bernie Satrom, and Steve Vetter.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

JUVENILE JUSTICE SYSTEM

Background

North Dakota Century Code Section 27-20-03 grants the juvenile court exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 years and is not married or under the age of 20 years with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 established the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

Testimony and Committee Considerations

In its study of the juvenile justice system, the committee received testimony from representatives of DOCR, the Supreme Court, the Council of State Governments' Justice Center, the North Dakota Association of Counties, and the North Dakota Juvenile Justice State Advisory Group.

A representative from the Division of Juvenile Services indicated the juvenile justice system starts with law enforcement and includes the juvenile court, probation child welfare, and the Division of Juvenile Services. Testimony further indicated the state's juvenile violent crime rate is less than half of the national rate; however, the state has a higher rate of drug and alcohol use and disorderly conduct. The higher rate of disorderly conduct cases was attributed to an increased law enforcement presence in schools; however, the committee was informed further analysis is needed to determine whether appropriate community resources exist to divert some of the higher risk youth. It was noted because the youth population in the criminal justice system is low, it is an opportune time to make changes to the system. Changes may help avoid the type of exponential growth in the incarceration rate of juveniles the adult system has experienced in recent years.

The committee received information from a representative from the Supreme Court indicating juvenile court directors in the state are reviewing the age of juveniles entering the system compared to the age of criminal responsibility as outlined in Section 12.1-04-01. This section provides an individual under 7 years of age is deemed incapable of commission of an offense defined by the Constitution of North Dakota or Century Code. Testimony indicated the juvenile court budget designates $11 per day per juvenile, with a total budget of $14 million. Juvenile court offices are located in 11 cities across the state and the Department of Juvenile Services operates 8 regional offices. According to the testimony, the judicial branch budget for the 2017-19 biennium is $11 million less than the 2015-16 biennium. Eleven positions were cut from the juvenile court and one office was closed.

A representative from the North Dakota Association of Counties indicated although prosecutors identified a lack of resources in rural areas and the western part of the state and issues with statewide polices, state's attorneys have expressed general satisfaction with the juvenile justice system.

Representatives from the Juvenile Court provided information regarding the process followed when a juvenile enters the juvenile court system. It was noted every juvenile is given a risk assessment to determine what is driving the behavior. Juvenile officers also provide more cognitive-based classes with groups to discuss how to handle stressful situations, and efforts have been made to provide more family based counseling. The committee received information from numerous individuals relating to the need for increased mental health services for youth.

The committee received information indicating a need to streamline juvenile services to provide services and funds to those families in need. The Dual Status Youth Initiative has received assistance from the Robert F. Kennedy National Resource Center for Juvenile Justice in an effort to change the trajectory of alleged abused and neglected children from entering the juvenile justice system by establishing child- and family-centered multi-disciplinary policies and practices. A representative from Juvenile Court Services indicated the initial implementation of the new family engagement policy will be in Grand Forks, Ramsey, Ward, Burleigh, Stutsman, Mercer, McLean, Oliver, and Sheridan Counties.

The committee considered a bill relating to the age of culpability of a juvenile. The bill would raise the age of culpability from 7 years old to 10 years old.

The committee received overwhelming testimony in support of the bill draft. Testimony indicated a law enforcement referral for a juvenile who is 7 or 8 years old would be sent to social services regardless of the statutory age of culpability because social services deals with the family dynamics that could be causing negative behaviors. According to the testimony, a juvenile under 12 years of age is placed with social services regardless of the offense and the most common age of culpability across the country is between 10 and 12 years of age.

Recommendation

The committee recommends House Bill No. 1039 to raise the age of culpability of a juvenile from 7 to 10 years old.

OPERATION AND MANAGEMENT OF CORRECTIONAL FACILITIES

Background

Section 12-44.1-02 authorizes the governing body of a county or city to establish and maintain a correctional facility, contract for correctional facility services and use of correctional facilities with another county or city, or establish and maintain a correctional facility in conjunction with other counties and cities. Section 12-44.1-06 requires DOCR to grade correctional facilities as to the length of allowable inmate confinement based on construction, size, and usage. Under this section:

- A grade one facility means a facility for confining inmates not more than 1 year;

- A grade two facility means a facility for confining inmates not more than 90 days;
- A grade three facility means a facility for confining inmates not more than 96 hours; and
- A grade four facility means an adult lockup or court holding facility in which individuals may not be detained overnight.

According to data from DOCR, the state has 30 correctional facilities varying from grade one to grade three--20 grade one facilities, 7 grade two facilities, and 3 grade three facilities. Inmate counts documented by DOCR indicate the average length of time individuals spend in county jails is 90 days and approximately 7,600 individuals are under supervision, of which approximately 900 are on parole.

Section 12-44.1-24 requires DOCR to prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private correctional facilities; to prescribe rules for the care and treatment of inmates; to make the rules and regulations available to inmates or be posted; and to appoint a correctional facility inspector to inspect each correctional facility at least once each year. For the purposes of correctional facility rules, DOCR is exempt from the Administrative Agencies Practice Act under Chapter 28-32 and therefore is not required to follow the same procedures as other state agencies with regard to adopting and publishing the rules for correctional facilities.

Testimony and Committee Considerations

In its study of operation and management of correctional facilities, the committee received information and testimony from a representative of DOCR, a representative of the Attorney General's office, and representatives from the North Dakota Association of Counties.

The testimony received from DOCR indicated a thorough review of statutory standards for county and regional correctional facilities is needed, especially because of the need for more rehabilitative services in grade one facilities. The testimony indicated Chapter 12-44.1, which was enacted in 1979, was created in response to corrections liability issues and inmate litigation occurring in the state and across the country. As adopted, the administration of Chapter 12-44.1 was under the office of the Attorney General and duties included creating rules for the operation of county correctional facilities and correctional facility inspections. In 1989, the Legislative Assembly created the Department of Corrections and Rehabilitation, which developed new correctional facility rules in compliance with state and federal laws. The rules were revised in 2005, 2014, and 2017.

Testimony indicated although DOCR does not have staff solely dedicated to facility inspections, several staff members assume this additional responsibility. The Department of Corrections and Rehabilitation oversees 31 multicounty, county, or city operated secure correctional facilities in the state for a total of 2,553 jail beds. It was noted the jail administrator or sheriff knows when a DOCR inspector is scheduled to be onsite for an annual inspection and the facility often will show compliance with the standards. Testimony indicated DOCR is notified of most rule violations through other channels, including reports from inmates upon arrival at DOCR regarding conditions of confinement while at a county facility, complaints to the Governor's office, written correspondence to a jail inmate at DOCR, and inmates' family members, or critical incidents such as a death or escape. The testimony indicated DOCR is committed to the safety of those incarcerated in the state and the safety of those working in county and regional correctional facilities. It was contended DOCR is in the best position to objectively complete the jail oversight process.

A representative from the North Dakota Association of Counties indicated satisfaction with DOCR's oversight of jail facilities and expressed a need to provide local mental health and addiction treatment within county jail facilities. A representative from the Cass County jail indicated jailers spend about 2 hours with each individual who is booked into the jail and about 50 percent of the mental health assessments are flagged for further assessment. About 60 percent of those actually are evaluated.

Recommendation

The committee makes no recommendation regarding the operation and management of correctional facilities.

JUSTICE REINVESTMENT IMPLEMENTATION STUDY AND REPORTS

Background

Inmate counts documented by DOCR indicate after a decline in the average number of inmates in 2011 and 2012, North Dakota has experienced an increase in average prison population since 2013. The 2015-16 average male inmate population for all facilities was 1,567. The 2015-16 average female inmate population for all facilities was 223.

Senate Bill No. 2015 (2017) directed DOCR to establish and implement, as a term and condition of parole and probation and as a sentencing alternative under Section 12.1-32-02, a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions. The bill

appropriated $7 million from special funds to the Department of Human Services (DHS) for the purpose of implementing the community behavioral health program during the 2017-19 biennium and created the Justice Reinvestment Oversight Committee to study the implementation of the community behavioral health program and justice reinvestment policies. The Justice Reinvestment Oversight Committee is staffed by the Governor's office and consists of:

- The Governor's general counsel;
- The Executive Director of DHS;
- The Director of the Behavioral Health Division of DHS;
- The Director of the Department of Corrections and Rehabilitation;
- The Chief Justice of the North Dakota Supreme Court or a designee;
- The Attorney General or a designee; and
- One member of the Senate and one member of the House of Representatives appointed by the Majority Leaders.

Section 5 of Senate Bill No. 2015 (2017) appropriated $500,000 from the general fund to be used by DHS to contract with public or private entities to create, initiate, and facilitate a strategic plan to increase all types of behavioral health services across the state.

Section 8 of Senate Bill No. 2015 (2017) requires all correctional facilities in the state to collaborate with the state's attorneys, judiciary, and law enforcement to develop an inmate population plan to prioritize admissions and retention based on facility budget, nature of the offense, status of the inmate, level of risk, medical or behavioral health needs, and whether the offense requires mandatory sentencing. The prioritization plan must include alternatives to custody, such as community placement, work release treatment, GIS monitoring, electronic home detention, employment, pretrial risk assessment or pretrial supervision.

Section 9 of Senate Bill No. 2015 (2017) directed the Department of Corrections and Rehabilitation and DHS to collaborate to establish a community behavioral health program to provide comprehensive community-based services for individuals with behavioral health issues. The program applies to individuals as a condition of parole or in lieu of incarceration, as a sentencing alternative. Requirements for the program include:

- A referral and evaluation process for program access;
- Eligibility criteria, including risk of recidivism and severity of behavior health diagnosis; and
- Program oversight, such as auditing and case management for seamless transition to post-program services, outcome and provider reporting metrics, and annual reports to Legislative Management and the Governor.

The Department of Human Services also is required to establish a system for contracting and paying behavioral health providers and for supervising and monitoring caseloads and the provision of services. To qualify as a contract provider, a behavioral health provider must:

- Accept all referrals and provide care through a multidisciplinary care team on an ongoing basis until discharge;
- Receive payments on a per-month, per-referral basis; and
- Bill third-parties for services and direct payment to the general fund.

Section 20 of House Bill No. 1041 (2017) required DOCR to report on the progress of the justice reinvestment initiative. Section 54-23.3-11 authorizes DOCR to refuse to admit inmates sentenced to the physical custody of the department when the admission of inmates exceeds the maximum operational capacity of its prison facilities and results in the department exceeding its authorized legislative appropriation for contract housing. The section also directs DOCR to develop a prison population management plan to prioritize admissions based on sentences and the availability of space within its facilities.

Testimony and Committee Considerations

Inmate Prioritization Plan

The committee received testimony and a report from DOCR indicating the department has not refused to admit any inmates under Section 54-23.3-11. The maximum capacity for women is 224 and 1,624 for men. The testimony indicated the inmate prioritization plan only will be triggered when the numbers are reached. If those numbers are reached, the plan would go into effect the month following the month when the average daily population exceeds the established numbers. According to the testimony, DOCR has experienced a decrease in both the number of men and women in the system. It was reported DOCR regularly communicates information on population counts to the sheriffs and jail

administrators through weekly summaries of the number of men and women on inmate status and the number of men and women being supervised in the community on parole or probation. If DOCR reaches capacity and implements the prioritization plan, DOCR reported it would not refuse the admission of an inmate, but a delay may occur in the department's ability to accept the inmate.

The testimony further indicated considerable work needs to be done to manage how prison and jails are being utilized and to reserve costly resources for those individuals who really need to be imprisoned. Testimony also indicated the implementation of good time credit for individuals incarcerated at the county or regional jail will have a positive impact on the prison population. From April 2017 through December 1, 2017, 434 individuals were sentenced to DOCR. It was noted during that period, 7,825 days of good time was awarded, averaging 18 days of good time per person. About 50 percent of individuals admitted are receiving a good time reduction on their sentences, reducing the length of stay in a DOCR facility by 18 days.

A representative of the Governor's office provided information regarding the prison prioritization plan, which ranks criminal offenses by level. Priority 1 includes violent offenses charged as AA, A, and B felonies; Priority 2 includes nonviolent offenses charged as AA, A, and B felonies, and violent offenses charged as C felonies; Priority 3 includes all other felonies and misdemeanor offenses. Information provided to the committee indicated DOCR staff periodically have met with local officials to discuss the prioritization plan and address existing concerns. Assistance is available and provided to counties and jail administrators developing population management plans, and DOCR worked with the North Dakota Association of Counties to bring together stakeholders to develop strategies to address common criminal justice problems. The information indicated collaboration with law enforcement agencies across the state has been challenged by the lack of a uniform data reporting system, and a uniform data reporting system is a clear impediment to the justice reinvestment efforts across the state.

Justice Reinvestment Oversight Committee

In its study of the implementation of justice reinvestment, the committee received a report and testimony from representatives of the Governor's office, DOCR, and DHS.

Testimony from a representative of DHS indicated the behavioral health component of justice reinvestment, a program called "free through recovery", is operated and implemented by DHS and DOCR. The program's community-based behavioral health programs are designed to increase recovery support services to individuals involved with the criminal justice system who have behavioral health concerns by matching participants with local community providers for care coordination, recovery, and peer support services. The information indicated the dual-agency approach facilitates both correctional and clinical best practices in a multidisciplinary integration of key systems. Although the free through recovery program was intended to be four pilot projects in Bismarck, Fargo, Devils Lake, and Dickinson, the enthusiastic public response highlighted the need for services across the state and the plan was expanded to a statewide program. Free through recovery began taking referrals on January 10, 2018, and became operational on February 1, 2018.

According to the testimony, free through recovery providers must participate in training and certification programs, and collect and share data regarding program participants, services and outcomes relating to housing, employment, substance abuse, criminal activity, law enforcement involvement, incarceration, and treatment services, and discharge planning. Services are reimbursed monthly on a per participant basis, with incentives available for each participant who meets target outcomes including:

- Progress toward ongoing, meaningful employment;
- Residence in supportive, safe, long-term housing;
- Progress toward recovery from alcohol or illicit substances;
- Engaging in mental health recovery, evidenced by a decrease in mental health symptoms; and
- Absence of criminal violations.

Although the committee received testimony indicating the program is intended to be data driven, upon receipt of the final report of the Justice Reinvestment Oversight Committee, only 3 months of data had been collected. The testimony indicated from the implementation date, February 1, 2018, the program has expanded and gained capacity. Participation reports through March 2, 2018, reflect 200 referrals, 171 admissions, and a program capacity of 485 participants. The June 28, 2018, free through recovery report reflected 542 referrals, 449 participants, with an expanded program capacity of 670.

Testimony from a representative of DOCR indicated in March 2018, 85 percent (22 out of 26) participants met identified outcome measures; in April 2018, 72 percent (183 out of 254) of participants met identified goals; and in May 2018, 75 percent (234 out of 310) reached outcome goals. It was noted additional data is necessary to provide true, accurate, and verifiable results.

The committee received information from a representative of the Council of State Governments indicating the state was approved for Category 1 funding from the Bureau of Justice Assistance and the funds were intended to be used to hire a coordinator for the justice reinvestment project. An unexplained delay in receipt of the funds resulted in the coordinator position being absorbed internally on a shared basis between the DOCR and DHS. The Category 1 funds, totaling, $106,786.73, were approved on March 8, 2018. As of May 31, 2018, no money from the grant had been spent. The testimony indicated the state applied for a second Bureau of Justice Assistance grant in March 2018, for a total of $393,213.27, and the oversight committee had not received notice relating to the disposition of the application.

Testimony from a representative of the Governor's office indicated it was the position of the Justice Reinvestment Oversight Committee that the issuance of any findings and recommendations would be premature and would not provide Legislative Management with a true or accurate picture of the benefits of the project.

Recommendations

The committee makes no recommendation with respect to the study and reports on the implementation of justice reinvestment policies in the state.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Audit and Fiscal Review Committee is a statutorily created committee of the Legislative Management. Pursuant to North Dakota Century Code Section 54-35-02.1, the committee is created as a division of the Budget Section and its members are appointed by the Legislative Management. The committee's purposes are to:

- Study and review the state's financial transactions to assure the collection of state revenues and the expenditure of state money is in compliance with law, legislative intent, and sound financial practices.
- Provide the Legislative Assembly with objective information on revenue collections and expenditures to improve the fiscal structure and transactions of the state.

Pursuant to Section 54-35-02.2, the committee is charged with studying and reviewing audit reports submitted by the State Auditor. The committee is authorized to make such audits, examinations, or studies of the fiscal transactions or governmental operations of state departments, agencies, or institutions as it may deem necessary.

Committee members were Senators Jerry Klein (Chairman), Dwight Cook, Judy Lee, and Richard Marcellais and Representatives Bert Anderson, Patrick Hatlestad, Mary Johnson, Keith Kempenich, Gary Kreidt, Andrew G. Maragos, Mike Nathe, Marvin E. Nelson, Chet Pollert, and Wayne A. Trottier.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

During the 2017-18 interim, the State Auditor's office and independent accounting firms presented 20 performance audit and evaluation reports and 121 financial or information technology application audit reports. During the 2017 regular legislative session, the committee received one additional performance audit and evaluation report and one additional information technology application audit report. An additional 27 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 audit reports accepted by the committee.

The committee was assigned the following duties and responsibilities for the 2017-18 interim:

1. Receive the annual audit report for the State Fair Association (Section 4.1-45-17).
2. Receive annual audit report from any corporation or limited partnership that produces agriculture ethyl alcohol or methanol in this state and which receives a production subsidy from the state (Section 10-19.1-152 and 45-10.2-115).
3. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Life Skills and Transition Center (Section 50-06.3-08 and 25-04-17).
4. Receive the annual audited financial statements and economic impact reports from the North Dakota low-risk incentive fund. (Section 26.1-50-05 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the committee).
5. Receive an electronic copy of the audit report from the North Dakota Stockmen's Association at least once every 2 years (Section 4.1-72-08 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the committee).
6. Receive the performance audit report of Job Service North Dakota upon the request of the committee (Section 52-02-18).
7. Determine necessary performance audits (Section 54-10-01(4) provides the State Auditor is to perform or provide for performance audits of state agencies, or the agencies' blended component units or discreetly presented component units, as determined necessary by the State Auditor or the committee, and provides for the committee to approve the State Auditor's hiring of a consultant to assist with conducting a performance audit).
8. Determine the frequency of audits or reviews of state agencies (Section 54-10-01(2)).
9. Determine when the State Auditor is to perform audits of political subdivisions (Section 54-10-13).

10. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (Section 54-10-15).
11. Study and review audit reports submitted by the State Auditor and make recommendations to the Legislative Assembly to reduce a state agency, department, or institution's appropriation if the state agency, department, or institution has failed to correct audit findings (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.

In addition, the State Auditor's office developed and the committee began receiving a one-page summary report for operational audits of state agencies. The summary report highlights the objective of the audit, including areas of internal control reviewed, findings relating to legislative intent, suggested areas of operational improvement, and key financial information.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

Section 54-10-01 requires the State Auditor to provide for the audit of the state's general purpose financial statements and to conduct a review of the material included in the *State of North Dakota Comprehensive Annual Financial Report*. The 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 of North Dakota Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2016*, and the *State of North Dakota Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2017*.

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, 2016. An unmodified opinion was issued on the financial statements. As of June 30, 2016, the University

System had total assets of $1.882 billion and total liabilities of $528 million, resulting in total net assets of $1.354 billion. The total net assets increased $117 million during fiscal year 2016. The annual degree credit headcount enrollment for the fall 2015 semester was 47,513, a decrease of 147 from the previous fall enrollment of 47,660.

The committee received the University System's annual financial report for the fiscal year ended June 30, 2017. An unmodified opinion was issued on the financial statements. As of June 30, 2017, the University System had total assets of $1.969 billion and total liabilities of $549 million, resulting in total net assets of $1.420 billion. The total net assets increased $66 million during fiscal year 2017. The annual degree credit headcount enrollment for the fall 2016 semester was 47,236, a decrease of 424 from the previous fall enrollment of 47,660.

PERFORMANCE AUDITS AND EVALUATIONS

State Board of Higher Education - Space Utilization

The committee received and accepted the performance audit report of the space utilization study of the State Board of Higher Education (SBHE). The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The University System requested and was appropriated $1 million for the 2013-15 biennium for a master plan and space utilization study. The study was to be completed during the 2013-15 biennium. The objective of the audit was to review the space utilization study conducted by SBHE during the 2013-15 biennium, including a review of the involvement of board members, board office staff, and campus personnel in the study, the comprehensiveness of the study, the contractor's compliance with terms of the contract, and the SBHE actions as a result of the study.

The committee was informed a space utilization study was not completed during the 2013-15 biennium because the University System may not have had adequate data to provide the consultants to conduct a complete space utilization study and $1 million may not have been enough funding for the initial scope of the project. While a space utilization study was not completed, the consultant conducted a study with a limited scope, which included deferred maintenance, classroom utilization analysis, and laboratory utilization analysis. The committee was informed SBHE approves institutional master plans based on programs or strategic needs and based on the consultant report, the board approved the following three recommendations intended to improve classroom size, laboratory utilization, and reduce deferred maintenance:

- Require central scheduling of at least 95 percent of classroom and class laboratories at each institution;
- Prioritize deferred maintenance projects that improve classroom and laboratories; and
- Remove facilities in lieu of repair when the estimated deferred maintenance cost is greater than 65 percent of the replacement value, unless there is significant historical value with the building.

University System Institutions - Purchasing Card Program

The committee received and accepted the performance audit report of the University System institutions purchasing card (P-Card) program. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objective of the audit was to evaluate certain aspects of the University System's P-card program, including P-Card policies and utilization of P-Cards to maximize financial benefits. The audit period included P-Card policies and procedures in place as of January 1, 2016, and reviewed statements, applications, and other documents from January 2015 to January 2016.

The P-Card program was implemented by state agencies in 2009. All 11 institutions and the University System office have a P-Card program and include purchasing cards as a method for purchases. Rebates on P-Card expenditures are received by the Office of Management and Budget and distributed to the respective higher education institution. University System expenditures and rebates for calendar years 2011 through 2015 were as follows:

University System	2011	2012	2013	2014	2015
Total P-Card program expenditures	$32,523,284	$35,381,846	$36,241,928	$42,546,333	$43,382,048
Rebates from total P-Card program expenditures	$403,876	$465,744	$485,606	$682,026	$699,293

The University System was developing a systemwide P-Card program policy when the State Auditor's office began conducting the audit. The committee learned the University System anticipates developing a policy that includes best practices and is consistent with P-Card policies of other state agencies. A goal of the audit was to include recommendations that would provide guidance to assist the University System with implementing a high-quality P-Card program policy according to best practices and state laws. The committee was informed P-Card policies were inconsistent among the institutions, and P-Cards were not being fully utilized.

The performance audit included the following recommendations for the University System:

1. Establish a uniform University System policy for the administration of P-Cards.
2. Review and update cardholder applications to ensure elements are consistent with University System policy.
3. Establish a formalized cardholder training program, which includes information on the P-Card program, and require completion of the program prior to issuance of a card.
4. Establish formalized and documented training for reviewers to ensure their role is properly executed.
5. Require P-Cards to only be used by the cardholder named on the card, and ensure written policies prohibit sharing of cards.
6. Establish a policy that defines P-Card violations, identifies consequences and severity of penalties for a violation, and ensures proper procedures are developed to document a violation.
7. Assign cardholders to a three-digit merchant carrier code group based on identified purchasing needs.
8. Establish a formalized process for communicating with the P-Card administrator to deactivate individual cards in a timely manner upon employee termination.
9. Require a direct supervisor or responsible official familiar with the departmental budget and expenditures to review P-Card transactions and provide for the P-Card administrator or designated official in the accounting office to audit or "spot check" the statements and transactions on a test basis.
10. Establish a systemwide process to consistently enter cardholder data.
11. Establish a framework for monitoring and providing feedback to employees using a P-Card regarding utilization of the P-Card for specific circumstances.
12. Remove restrictions for P-Card use of purchases that would otherwise be allowable.
13. Increase purchasing limits for employees authorized to make large-dollar purchases either on a permanent or temporary basis, and consider the use of other payment options for large-dollar purchases.

North Dakota State University - Parking and Transportation Services Department

The committee received and accepted the performance audit report of the North Dakota State University (NDSU) Parking and Transportation Services department. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objective of the audit was to determine if the NDSU's Parking and Transportation Services department is being operated in accordance with applicable best practices. The time period included in the audit was July 2015 through October 2016.

The NDSU Parking and Transportation Services department is a unit of the NDSU Facilities Management department and is responsible for the effective and efficient operations of parking lots on the NDSU campus. The functions of the department include selling and issuing parking permits for students, staff, faculty, and others; operating pay lots; providing parking enforcement; providing oversight of lot reconstruction and maintenance; providing oversight of lot assignments; providing oversight of parking and traffic signage; serving as a liaison for campus mass transit; and serving as a liaison with local government boards involving municipal parking issues. The department is a member of the International Parking Institute. According to the report, the department joined the International Parking Institute to improve the parking and transportation services at NDSU. The institute administers an Accredited Parking Organization program, which the institute describes as a designation for parking organizations that have achieved a comprehensive standard of excellence. A member organization must demonstrate accomplishment of established criteria to earn this accreditation. The State Auditor's office used 13 of the 25 accreditation criteria from the Accredited Parking Organization program to evaluate the NDSU Parking and Transportation Services policies, procedures, and transactions. A major finding of the audit was several areas of the NDSU Parking and Transportation Services department were operating in accordance with the selected criteria.

The performance audit identified several opportunities for improvement, for the NDSU Parking and Transportation Services department including:

1. Provide for the Campus Space and Facilities Committee to meet and annually review the department's financial data.
2. Develop and document short-term and long-term goals at the department level.
3. Develop appropriate annual and long-term operating budgets and periodically compare the year-to-date results to identify potential errors or other issues that need to be addressed.

4. Review and update the NDSU Parking and Transportation Services department's written policy descriptions and continue to update them periodically pursuant to NDSU policy.
5. Develop a process for monitoring training and continuing education for departmental employees.
6. Adopt formal statements of the department's mission, objectives, and values, including objectives relating to campus safety and security.
7. Implement a process for periodic reconciliation of revenues between the department's parking management software and the department's financial statements.
8. Comply with University System Procedures 1901.2.1 relating to storage or transmission of data classified as private.

University of North Dakota - Continuity of Operations Planning

The committee received and accepted the performance audit report of the University of North Dakota (UND) continuity of operations planning. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objective of the performance audit was to determine whether UND continuity of operations plan includes all necessary elements and assures the capability to continue the essential functions of UND in the event of an emergency. The audit period for which information was reviewed consisted primarily of the UND department and unit-level continuity of operations plans in place as of May 19, 2017.

Institutions of higher learning are at risk of being impacted by various emergencies, including natural disasters, fires, active shooter incidents, cyber attacks, and pandemics. Disasters may risk lives, cause injuries and property damage; and affect teaching, research, public service, and other business operations. The Federal Emergency Management Agency (FEMA) provides guidance for development and implementation of continuity of operations plans. The continuity of operations plan provides a framework to enable an organization to continue essential functions if an event threatens operations or requires relocation of selected staff personnel and functions. The FEMA issued *Continuity Guidance Circular 1, Continuity Guidance for Non-Federal Entities* to provide guidance to nonfederal entities to develop a continuity of operations plan. The guide outlines 10 elements necessary for an effective continuity capability which includes essential functions; orders of succession; delegation of authority; continuity facilities; continuity communications; vital records management; human capital, tests, training, and exercises; devolution of control and direction; and reconstitution of operations. The State Auditor's office used the outline for purposes of the performance audit. The report indicated the UND continuity of operations plan does not fully address some necessary elements. The performance audit included the following recommendations for UND:

1. Develop and include elements of tests, training, and exercises for both an institutionwide and departmental continuity of operations plan template.
2. Communicate the university's essential functions and department level roles to those individuals responsible for developing and implementing elements of the university's continuity of operations plan.
3. Add fields to the continuity of operations plan template for completion date, reviewer name, and revision and approval dates.
4. Communicate the university's need for appropriate department level continuity of operations plan to those individuals responsible for completing the plan.

University System Institutions - Emergency Preparedness

The committee received and accepted the performance audit reports of the emergency preparedness at Dickinson State University (DSU), Mayville State University (MaSU), Minot State University (MiSU), Valley City State University (VCSU), Bismarck State College (BSC), North Dakota State College of Science (NDSCS), NDSU, and Williston State College (WSC). The performance audits were conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objective of the performance audits of DSU, MaSU, MiSU, and VCSU was to determine whether each university had an effective strategy regarding the development and implementation of an emergency operations plan. The objective of the performance audits of BSC, NDSCS, and WSC was to determine whether each university emergency operation plan is designed and implemented pursuant to State Board of Higher Education policies and best practices; and whether each university continuity of operation plan is designed and implemented pursuant to best practices. The objective of the performance audit of NDSU was to determine whether the university has an effective strategy regarding the development and implementation of an emergency operations plan, and whether it has an effective continuity of operations plan. The audit period included emergency preparedness policies and procedures in place as of October 2016.

The State Board of Higher Education adopted Policy 906 in May 2012 requiring all University System institutions to develop and implement comprehensive emergency management plans. Policy 906 defines an emergency management plan as a comprehensive, integrated plan that addresses emergency preparedness, emergency management, disaster and emergency response and recovery, mitigation, and continuity of operations. In addition to Policy 906, the State Auditor's office reviewed outside sources for guidance on best practices for an emergency preparedness plan including the federal *Guide for Developing High-Quality Emergency Operations Plans for Institutions of Higher Education*. Policy 906 and the federal guide provide a process for identifying high-risk areas where emergencies could occur at an institution level, and ways to develop an emergency operations plan to address those high-risk areas. The major findings of the audits indicated DSU and VCSU have developed an emergency operation plan, but several opportunities for improvement were identified. Mayville State University and MiSU do not have an effective strategy regarding the development and implementation of an emergency operation plan. Bismarck State College, NDSCS, and NDSU have developed an emergency operation plan, however, there was no effective continuity of operation plan developed or implemented and several opportunities for improvement were identified. Williston State College has an emergency operation plan, but there are opportunities to improve the design and implementation of the plan. Williston State College does not have a comprehensive continuity of operations plan.

The performance audit included the following recommendations for DSU:

1. Broaden the emergency management task force to include representatives from across the institution and develop roles and responsibilities for all representatives of the task force and the operations support group.
2. Implement a formal risk assessment to identify and evaluate potential emergency events.
3. Establish formalized goals and objectives for addressing threats and hazards to prepare for emergency situations.
4. Formalize minimum training requirements for employees with emergency operations responsibilities and include in the comprehensive emergency operation plan.
5. Develop and incorporate appropriation plan exercise requirements into the comprehensive emergency operation plan.
6. Enforce and strengthen policies for periodically reviewing and revising the emergency operation plan.
7. Implement a comprehensive continuity of operations plan.

The performance audit included the following recommendations for MaSU:

1. Develop a collaborative planning team for implementing an emergency operations plan.
2. Implement a risk assessment process to evaluate potential emergency events.
3. Establish goals and objectives for addressing threats and hazards to prepare for emergency situations.
4. Develop hazard-specific emergency procedures for the comprehensive emergency operation plan.
5. Develop appropriate training requirements and plan exercise requirements for the comprehensive emergency plan.
6. Implement policies for periodically reviewing and revising the emergency operation plan.
7. Implement a comprehensive continuity of operations plan, including applicable requirements of SBHE Policy 906 and elements recommended in the FEMA *Continuity Guidance Circular 1* (CGC 1) policy.

The performance audit included the following recommendations for MiSU:

1. Develop clearly defined roles and responsibilities for members of the collaborative planning team.
2. Implement a formalized risk assessment process to evaluate potential emergency events.
3. Establish formalized goals and objectives for handling threats and hazards to prepare for emergency situations.
4. Develop appropriate training requirements pursuant to SBHE Policy 906.
5. Implement policies for periodically reviewing and revising the emergency operation plan.
6. Implement a comprehensive continuity of operations plan.

The performance audit included the following recommendations for VCSU:

1. Implement a formal risk assessment process to evaluate potential emergency events.
2. Establish formalized goals and objectives for handling threats and hazards to prepare for emergency situations.
3. Develop minimum training and plan exercise requirements into the comprehensive emergency operation plan.
4. Implement policies for periodically reviewing and revising emergency preparedness plans, policies, and procedures.

The performance audit included the following recommendations for BSC:

1. Implement a formal risk assessment process to periodically identify and evaluate potential threats and hazards, and incorporate into the emergency operation plan.
2. Develop and include a comprehensive base plan in the emergency operation plan.
3. Establish formalized disaster-specific related goals and objectives for each significant emergency incident.
4. Develop and implement formalized training requirements for emergency response personnel and incorporate into the emergency operation plan.
5. Identify minimum exercise requirements relating to conducting and reviewing exercises in the emergency operations plan.
6. Implement formal policies for periodically reviewing and revising the emergency operations plan.
7. Implement a comprehensive continuity of operations plan.

The performance audit included the following recommendations for NDSCS:

1. Implement a formal risk assessment process to periodically identify and evaluate potential threats and hazards, and incorporate into the emergency operation plan.
2. Establish formalized disaster-specific related goals and objectives for each significant emergency incident.
3. Incorporate training requirements, including assignment of training responsibilities to team members in its comprehensive emergency operation plan.
4. Expand the exercise requirements and assignment of responsibilities in its emergency operation plan based on potential threats determined to be high risk.
5. Implement a process for formal approval on revisions to its emergency operation plan.
6. Implement a comprehensive continuity of operations plan.

The performance audit included the following recommendations for NDSU:

1. Establish a collaborative planning team consisting of a cross section of various stakeholders of the university and identify, assign, and document roles and responsibilities to members of the collaborative planning team.
2. Implement a formal risk assessment process to periodically identify and evaluate potential threats and hazards and incorporate the identified threats and hazards in the formal risk assessment into the emergency operation plan.
3. Establish formalized disaster-specific related goals and objectives for each significant emergency incident.
4. Incorporate procedures for potential emergencies based on disaster-specific goals and objectives in the emergency operation plan.
5. Incorporate minimum training requirements into the comprehensive emergency operation plan pursuant to SBHE Policy 906 and ensure all Incident Command System positions have documented minimum training requirements.
6. Identify minimum requirements related to conducting and reviewing exercises in the emergency operation plan pursuant to SBHE Policy 906.
7. Implement formal policies for periodically reviewing and revising the emergency operation plan involving the collaborative planning team.

8. Implement a comprehensive continuity of operations plan.

The performance audit included the following recommendations for WSC:

1. Identify and document the members of the collaborative planning team in the emergency operations plan and develop and implement roles and responsibilities for members of the collaborative planning team and document them in the emergency operations plan.
2. Implement a formal risk assessment process to periodically identify and evaluate potential threats and hazards and incorporate the identified threats and hazards identified in the formal risk assessment into the emergency operations plan.
3. Develop and include a comprehensive base plan in the emergency operations plan pursuant to *Guide for Developing High-Quality Emergency Operations Plans for Institutions of Higher Education* and SBHE Policy 906.
4. Establish formalized disaster-specific related goals and objectives for each significant emergency incident.
5. Develop and implement formalized training requirements for emergency response personnel and incorporate them into the emergency operations plan pursuant to SBHE Policy 906.
6. Develop and implement formalized exercise requirements for responding to emergency threats and hazards.
7. Implement formal policies for periodically reviewing and revising the emergency operations plan regarding the collaborative planning team.
8. Implement a comprehensive continuity of operations plan.

Governor's Office - Travel and Use of State Resources

The committee received and accepted the performance audit report of the Governor's office travel and use of state resources. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objectives of the audit were to determine whether the Governor's office is using the state airplane in a prudent manner, whether the executive security provided by the Highway Patrol is a prudent use of state resources, and whether there are opportunities to improve the transparency regarding the use of state airplanes. The time period included in the audit was March 2016 to February 2018.

The Department of Transportation (DOT) operates and maintains three state-owned airplanes. The costs associated with the airplanes are budgeted and paid for by DOT. Section 24-02-48 requires DOT to provide air transportation services to other state agencies upon request. Each agency using the services is required to pay a user charge unless waived by DOT. The Department of Transportation waives all charges for usage of state airplanes by the Governor's office and the First Lady. All other agencies are billed based on the user charge. The airplane user charge established by DOT is based on actual costs and usage. The Department of Transportation also charters private airplanes for the Governor's office and the First Lady when state-owned airplanes or state pilots are unavailable. The total costs of the private charters are billed to and paid by DOT. The Department of Transportation's policy requires the use of the state-owned airplanes to be for official business only. The Governor and Governor's office employees and the Director and Deputy Directors of DOT have priority for use of the airplanes. A major finding of the audit included identifying 17 flights involving the Governor where a portion of the flight was considered commuting. The report stated there was no issues related to the executive security provided by Highway Patrol. The State Auditor's office suggested including air transportation services costs within the Governor's office budget to better reflect the costs in the correct agency and to allow better prioritization based on available funding.

The performance audit included the following recommendations:

1. The Governor's office discontinue the use of air transportation services for commuting to or from personal residence to official meetings or offices.
2. The Department of Transportation discontinue providing transportation services to nonstate employees without a business purpose.
3. The Department of Transportation ensure the state is not exposed to additional risk for nonstate employees traveling on state-owned airplanes.
4. The Department of Transportation require all agencies to submit a Request for Air Transportation form to establish a business purpose of the trip.

Administrative Committee on Veterans' Affairs - Oversight Structure

The committee received and accepted the performance audit report of the Administrative Committee on Veterans' Affairs (ACOVA) oversight structure. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objectives of the audit were to identify opportunities to improve the way ACOVA carries out its duties and responsibilities; and identify how the organizational structure of veterans services agencies in the state compares to other states. Surveys and interviews were conducted with stakeholders involved with providing assistance to veterans in the state to obtain comments, concerns, and suggestions about ACOVA and the Department of Veterans' Affairs.

The veterans' affairs oversight structure includes five veterans' service nominating organizations, including Veterans of Foreign Wars, the American Legion, Disabled American Veterans, Veterans of World War II, Korea, and Vietnam and Vietnam Veterans of America. The Administrative Committee on Veterans' Affairs is responsible for the organization, policy, and general administration of all veterans' affairs in the state. Each nominating organization has three voting members on ACOVA. A nominating organization submits two nominations to the Governor for a 3-year appointment to ACOVA. The Administrative Committee on Veterans' Affairs also includes advisory capacity members, including the Adjutant General, the Executive Director of Job Service North Dakota, and the Director of the United States Department of Veterans Affairs. The Administrative Committee on Veterans' Affairs oversees the veterans' postwar trust fund, which is invested and maintained by the State Treasurer's office. The Administrative Committee on Veterans' Affairs appoints a seven-member North Dakota Veterans' Governing Board. The board appoints the administrator for the Veterans' Home. The Administrative Committee on Veterans' Affairs appoints the Commissioner of the Department of Veterans' Affairs.

The performance audit provided observations regarding the nominating organizations, including aging membership and challenges of recruiting newer veterans, inconsistent nominating process and nominees lack of interest in serving, and other veterans service organizations not being eligible to participate; ACOVA, including sustainability concerns, the need to broaden veteran representation, and governing members and qualifications; State Treasurer's office, including investment strategy input for the veterans' postwar trust fund, third-party investment management fees, and strained working relationships; Department of Veterans' Affairs, including duplication of services, impact of budget reductions on ability to provide assistance, open records requests, timeliness, and accuracy of information being provided to legislators; county and tribal veterans service officers, including limited requirements, lack of oversight, and lack of cooperation; and overall lack of a unified message among stakeholders. The audit did not include any formal findings or recommendations.

Veterans' Home

The committee received and accepted the performance audit of the Veterans' Home. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objectives of the audit were to identify opportunities to better position the Veterans' Home; and to identify opportunities to strengthen the monitoring activities of the Veterans' Home. The time period included in the audit was July 2013 through September 2017.

The Veterans' Home is located in Lisbon and was established in 1891. The purpose of the Veterans' Home is to provide basic care and long-term care for all eligible veterans and all honorably discharged soldiers of the North Dakota National Guard who may become permanently disabled from any cause while in the line and discharge of duty, and spouses and surviving spouses if they meet the requirements for admission. The major findings of the audit identified approximately one-third of the Veterans' Home basic care beds are vacant and management no longer uses a portion of the facility; the Veterans' Home has opportunities to utilize this unfilled capacity and to identify the best and most effective use of the facility; the Veterans' Home operated without a strategic plan for a period of time; the Veterans' Home's policies and procedures lack the level of detail necessary to allow management to effectively monitor control activities; the Veterans' Home monitoring activities failed to ensure policies and written plans were carried out; and some Veterans' Home employees had not received a performance evaluation within the last year.

The performance audit included the following recommendations for the Veterans' Home:

1. Seek assistance to create and implement a strategic plan, and report on the status of the strategic plan to ACOVA.
2. Ensure policies are documented in the appropriate level of detail to allow management to effectively monitor the control activities.
3. Strengthen monitoring activities to ensure policies and written plans are carried out.
4. Ensure performance evaluations are conducted at least annually.

5. Establish a process to periodically monitor the accuracy and completeness of mineral royalty income.

Department of Veterans' Affairs

The committee received and accepted the performance audit of the Department of Veterans' Affairs. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objectives of the audit were to identify opportunities to improve the administration of the veterans aid loan program, identify opportunities to improve the administration of the hardship assistance grants program, and to identify opportunities to enhance the use of federal funds awarded pursuant to the highly rural transportation grant program for administrative costs. The time period included in the audit was July 2013 through September 2017.

The Department of Veterans' Affairs is established under the supervision and control of the Commissioner of Veterans' Affairs. Duties of the Commissioner include coordinating agencies to render services and benefits to returning veterans; overseeing the implementation of programs and benefits authorized by statute; assisting veterans or their widows, administrators, executors, guardians, or heirs, with processing claims; advising veterans with utilizing the Servicemen's Readjustment Act of 1944, or any similar measurers provided by the federal government; providing counties with training of county veterans' service officers; providing county veterans' service officers with educational materials; assisting county veterans' service officers with the performance of their duties; disseminating information; and other items necessary to carry out the intent and purposes of Chapter 37-18.

The major findings of the audit included the department not establishing underwriting guidelines to use when determining an applicant's financial ability to repay the aid loan; the department not adhering to the ACOVA collection policies and procedures for delinquent loans; the veterans aid loan system being outsourced to a vendor without receiving an exemption from the Information Technology Department; certain policies for hardship assistance grants are unclear, no longer relevant, or effective in achieving the objectives of the program; the information system used to monitor hardship assistance grants is inadequate to meet the department's needs; the department using state resources to solicit donations and process applications for a nongovernmental entity without legislative authorization; the department expended funds received from the Impact Foundation without legislative or Emergency Commission approval; and the department using federal funds awarded under the highly rural transportation grants program for administrative costs.

The performance audit included the following recommendations for the Department of Veterans' Affairs:

1. Establish underwriting guidelines for determining an applicant's financial ability to repay the aid loan.
2. Adhere to ACOVA loan collection policies and procedures for delinquent loans.
3. Comply with Information Technology Department requirements for outsourcing.
4. Review policies for clarity, continued relevance, effectiveness in achieving the objectives of the hardship assistance grants program, and propose policy refinements to ACOVA for approval.
5. Obtain an effective information system to meet the objectives of the hardship assistance grants program.
6. Use state resources and expend private funds pursuant to state laws.

University System Office Performance Audit Followup

The committee received and accepted the followup report to the University System office performance audit. The original performance audit was presented to the committee in March 2013. The audit was conducted to determine if the University System office is adequately staffed to perform its function. The followup report indicated five of the original recommendations have been fully implemented, three recommendations have been partially implemented, and three recommendations have not been implemented. Those not implemented relate to having internal audit functions within the University System report to the appropriate system office personnel instead of the institution president; reviewing the Indian Scholarship program to ensure compliance with administrative rules; and maintaining an appropriate records management program in compliance with Chapter 54-46. Four of the original recommendations were determined to be redundant, and therefore, excluded from the followup report.

Game and Fish Department Performance Audit Followup

The committee received and accepted the followup report to the Game and Fish Department performance audit. The original performance audit was presented to the committee in July 2014. The audit was conducted to determine if the private land open to sportsmen program is operating effectively, and if the Game and Fish Department is in compliance with laws, rules, and policies related to human resources and use of resources. The followup report indicated 36 of the original recommendations have been fully implemented and 8 recommendations have been partially implemented.

Fees Charges at North Dakota State University and University of North Dakota Performance Audit Followup

The committee received and accepted the followup report to the fees charged at NDSU and UND performance audit. The original performance audit was presented to the committee in July 2012. The audit was conducted to review fees at NDSU and UND to determine whether fees are appropriately established and used by the universities. Because SBHE approved modifications to its tuition model in October 2016, the State Auditor's office took a different approach to the followup report and focused on three of the recommendations made to the board relating to the fee process, program fee requirements, and course fee requirements. The board has taken action to address the recommendations as part of the new tuition model and each institution is working on implementation plans for the new tuition model. The new model is anticipated to be implemented at each institution by the fall of 2019.

Department of Trust Lands Performance Audit Followup

The committee received and accepted the followup report of the *Department of Trust Lands - Energy Infrastructure and Impact Office (November 6, 2015)*, *Department of Trust Lands - Trust Assets and Department Resources (March 18, 2016)*, and *Department of Trust Lands - Unclaimed Property (January 5, 2016)* performance audits. The original performance audits were presented to the committee in April 2016. The audit of the Energy Infrastructure and Impact Office was conducted to determine if the Energy Infrastructure and Impact Office effectively administers its grants, including distributions of funds and compliance with legislative intent. The audit of the trust assets and department resources was conducted to determine if the department is obtaining, accounting for, and using resources efficiently and effectively, including the administration of the state's mineral interests and leasing auctions; grazing and agriculture leases, rights-of-way, and site reclamation; management of assets in trust funds and distributions from trust funds; and mineral royalty collections, mineral-related payments, surface rents, and nonproducing leases. The audit of unclaimed property was conducted to determine if the department is effectively administering unclaimed property, including claims payments. The three performance audits were consolidated into one followup report and the recommendations from the three reports were consolidated into categories. The report stated the department has made a number of improvements. The three remaining barriers include changing administrative rules, implementing new information technology systems, and updating department policies and procedures.

University System Institutions Tuition Waivers and Student Stipends Performance Audit Followup

The committee received and accepted the followup report of the University System institutions tuition waivers and student stipends performance audit. The original performance audit was presented to the committee in April 2015. The audit was conducted to review tuition discounts, waivers, and student stipends at University System institutions. The followup report indicated four of the original recommendations have been fully implemented, four recommendations have been partially implemented, and two recommendations have not been implemented. Those not implemented relate to establishing policies for cultural diversity, international, graduate, and other common institutional tuition waiver types; and establishing limits on the tuition waivers institutions can award. According to the report, the new tuition model being adopted by SBHE will reduce the number of student fees. In addition, the board adopted policies to require all institutions to establish procedures for all waivers.

INFORMATION TECHNOLOGY AUDITS

University System's Technology Security Audit and Vulnerability Assessment

The committee received and accepted the University System's technology security audit and vulnerability assessment report. The objective of the audit was to evaluate external and internal vulnerability assessments on the networks of the University System, including BSC, Dakota College at Bottineau, DSU, Lake Region State College, MaSU, MiSU, NDSCS, NDSU, UND, VCSU, WSC, and University System offices in Fargo, Bismarck, and Grand Forks. The time period included in the audit was September 12 through October 20, 2016. The major findings of the audit and related recommendations related to missing software patch or required upgrades, unsupported operating systems, easily guessed or default credentials, systems with well-known vulnerabilities, clear text password, secure sockets layer certificate issues, unsupported web server, and cross-site scripting and structured query language injection. The consultants recommended the University System expand its role in reviewing vulnerability assessments, including dedicating more resources to reviewing policies and procedures to comply with the cybersecurity framework.

Information Technology Department Service Organization Audit

The committee received and accepted the Information Technology Department service organization audit report. The audit was conducted by the State Auditor's office pursuant to authority within Section 54-10-01. The objective of the audit was to evaluate the fairness of the presentation of department's description of controls. The time period

included in the audit was July 2015 through June 2016. The information systems audit identified seven significant audit findings relating to disaster recovery, destruction of expired tapes and hard drives, changing default passwords on privileged accounts, encryption of portable devices, use of privileged accounts for administrative activities, access to data centers, and monitoring job-related training.

OTHER REPORTS

Department of Human Services Accounts Receivable Writeoffs

Pursuant to Section 25-04-17 and 50-06.3-08, the Department of Human Services is required to report to the committee regarding accounts receivable writeoffs at the State Hospital, Life Skills and Transition Center, and human service centers as of June 30 of each fiscal year. Accounts receivable writeoffs as of June 30, 2017, were $6,436,796 at the State Hospital, $330,872 at the Life Skills and Transition Center, and $762,567 at the human service centers.

Accounts receivable writeoffs as of June 30, 2018, were $10,879,095 at the State Hospital, $56,373 at the Life Skills and Transition Center, and $1,118,273 at the human service centers.

OTHER INFORMATION

The committee received other information and reports relating to an examination 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 2017-18 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Accountancy, State Board of	June 30, 2016 and 2015	July 25, 2017
Addiction counselor internship loan program	June 30, 2016	July 25, 2017
Addiction counselor internship loan program	June 30, 2017 and 2016	January 10, 2018
Adjutant General	June 30, 2016 and 2015	July 25, 2017
Administrative Committee on Veterans' Affairs oversight structure performance audit	March 28, 2018	June 27, 2018
Administrative Hearings, Office of	June 30, 2017 and 2016	June 27, 2018
Aeronautics Commission, North Dakota	June 30, 2017 and 2016	June 27, 2018
Ag PACE fund	June 30, 2016 and 2015	July 25, 2017
Ag PACE fund	June 30, 2017 and 2016	January 10, 2018
Agriculture, Department of	June 30, 2017 and 2016	June 27, 2018
Architecture and Landscape Architecture, State Board of	June 30, 2017 and 2016	June 27, 2018
Attorney General	June 30, 2016 and 2015	July 25, 2017
Bank of North Dakota	June 30, 2016	July 25, 2017
Bank of North Dakota	June 30, 2017	June 27, 2018
Barley Council, North Dakota	June 30, 2016 and 2015	July 25, 2017
Beef Commission, North Dakota	June 30, 2016 and 2015	July 25, 2017
Beef Commission, North Dakota	June 30, 2017 and 2016	January 10, 2018
Beginning farmer revolving loan fund	December 31, 2016 and 2015	July 25, 2017
Beginning farmer revolving loan fund	December 31, 2017 and 2016	June 27, 2018
Bismarck State College	June 30, 2017 and 2016	June 27, 2018
Bismarck State College emergency preparedness performance audit	March 23, 2018	June 27, 2018
Building Authority, State	June 30, 2017 and 2016	January 10, 2018
Career and Technical Education, Department of	June 30, 2017 and 2016	October 3, 2018
Chiropractic Examiners, State Board of	December 31, 2016	January 10, 2018
Clinical Laboratory Practice, State Board of	June 30, 2015 and 2014	July 25, 2017
Clinical Laboratory Practice, State Board of	June 30, 2017 and 2016	October 3, 2018
College SAVE (Bank of North Dakota)	December 31, 2016 and 2015	July 25, 2017
College SAVE (Bank of North Dakota)	December 31, 2017 and 2016	June 27, 2018
Commerce, Department of	June 30, 2017 and 2016	June 27, 2018
Commission on Legal Counsel for Indigents	June 30, 2017 and 2016	January 10, 2018
Community water facility loan fund	December 31, 2016 and 2015	July 25, 2017
Community water facility loan fund	December 31, 2017 and 2016	June 27, 2018
Corn Utilization Council, North Dakota	June 30, 2016 and 2015	January 10, 2018
Corrections and Rehabilitation, Department of	June 30, 2017 and 2016	October 3, 2018
Council on the Arts, North Dakota	June 30, 2017 and 2016	June 27, 2018
Dairy Promotion Commission, North Dakota	June 30, 2016 and 2015	July 25, 2017
Dakota College at Bottineau	June 30, 2017 and 2016	October 3, 2018
Dental Examiners, State Board of	June 30, 2015 and 2014	July 25, 2017
Development Fund, Inc.	June 30, 2016 and 2015	July 25, 2017

Agency	Audit Report Date	Meeting Date Accepted
Development Fund, Inc.	June 30, 2017 and 2016	January 10, 2018
Dickinson State University	June 30, 2017 and 2016	June 27, 2018
Dickinson State University emergency preparedness performance audit	October 19, 2017	January 10, 2018
Dietetic Practice, Board of	September 30, 2017 and 2016	June 27, 2018
Dry Bean Council, North Dakota	June 30, 2016 and 2015	July 25, 2017
Dry Pea and Lentil Council, North Dakota	June 30, 2016 and 2015	July 25, 2017
Electrical Board, State	June 30, 2017 and 2016	October 3, 2018
Ethanol Council, North Dakota	June 30, 2016 and 2015	July 25, 2017
Examiners on Audiology and Speech-Language Pathology, Board of	June 30, 2016 and 2015	July 25, 2017
Financial Institutions, Department of	June 30, 2016 and 2015	July 25, 2017
Funeral Service, State Board of	June 30, 2016 and 2015	June 27, 2018
Game and Fish Department	June 30, 2016 and 2015	July 25, 2017
Game and Fish Department performance audit followup	May 19, 2017	July 25, 2017
Governor's office	June 30, 2017 and 2016	June 27, 2018
Governor's office travel and use of state resources performance audit	May 18, 2018	June 27, 2018
Guaranteed Student Loan Program, North Dakota	September 30, 2016 and 2015	July 25, 2017
Guaranteed Student Loan Program, North Dakota	September 30, 2017 and 2016	June 27, 2018
Health, State Department of	June 30, 2017 and 2016	June 27, 2018
Highway Patrol	June 30, 2016 and 2015	July 25, 2017
Historical Society, State	June 30, 2016 and 2015	July 25, 2017
Housing Finance Agency	June 30, 2016 and 2015	July 25, 2017
Housing Finance Agency	June 30, 2017 and 2016	January 10, 2018
Housing incentive fund	June 30, 2016 and 2015	July 25, 2017
Housing incentive fund	June 30, 2017 and 2016	January 10, 2018
Human Services, Department of	June 30, 2017 and 2016	June 27, 2018
Indian Affairs Commission	June 30, 2016 and 2015	July 25, 2017
Industrial Commission	June 30, 2017 and 2016	June 27, 2018
Information Technology Department	June 30, 2016 and 2015	July 25, 2017
Information Technology Department service organization audit	July 1, 2015 to June 30, 2016	July 25, 2017
Infrastructure revolving loan fund	June 30, 2016	July 25, 2017
Infrastructure revolving loan fund	June 30, 2017 and 2016	January 10, 2018
Insurance Commission	June 30, 2017 and 2016	October 3, 2018
Job Service North Dakota	June 30, 2016 and 2015	July 25, 2017
Job Service North Dakota	June 30, 2017 and 2016	January 10, 2018
Judicial branch	June 30, 2017 and 2016	June 27, 2018
Labor and Human Rights, Department of	June 30, 2017 and 2016	June 27, 2018
Lake Region State College	June 30, 2017 and 2016	October 3, 2018
Law Examiners, State Board of	June 30, 2017 and 2016	June 27, 2018
Legislative Assembly	June 30, 2017 and 2016	January 10, 2018
Legislative Council	June 30, 2017 and 2016	January 10, 2018
Lottery, North Dakota	June 30, 2016 and 2015	July 25, 2017
Lottery, North Dakota	June 30, 2017 and 2016	June 27, 2018
Management and Budget, Office of	June 30, 2017 and 2016	January 10, 2018
Massage, Board of	June 30, 2017 and 2016	June 27, 2018
Mayville State University	June 30, 2017 and 2016	October 3, 2018
Mayville State University emergency preparedness performance audit	October 18, 2017	January 10, 2018
Medical facility infrastructure loan program	June 30, 2016 and 2015	July 25, 2017
Medical facility infrastructure loan program	June 30, 2017 and 2016	January 10, 2018
Milk Marketing Board	June 30, 2016 and 2015	January 10, 2018
Mill and Elevator Association	June 30, 2016 and 2015	July 25, 2017
Mill and Elevator Association	June 30, 2017 and 2016	January 10, 2018
Minot State University	June 30, 2017 and 2016	June 27, 2018
Minot State University emergency preparedness performance audit	August 22, 2017	January 10, 2018
North Dakota State College of Science emergency preparedness performance audit	March 19, 2018	June 27, 2018
North Dakota State University	June 30, 2017 and 2016	October 3, 2018
North Dakota State University - Parking and Transportation Services Department performance audit	February 23, 2017	July 25, 2017
North Dakota State University emergency preparedness performance audit	January 11, 2018	June 27, 2018
North Dakota University System Annual Financial Report	June 30, 2016	July 25, 2017
North Dakota University System Annual Financial Report	June 30, 2017	June 27, 2018
North Dakota University System institutions - Fees charged at North Dakota State University and University of North Dakota performance audit followup	May 1, 2017	July 25, 2017

Agency	Audit Report Date	Meeting Date Accepted
North Dakota University System institutions - Use of tuition waivers and student stipends performance audit followup	March 23, 2018	June 27, 2018
North Dakota University System office	June 30, 2016 and 2015	July 25, 2017
North Dakota University System office performance audit followup	June 15, 2017	July 25, 2017
North Dakota University System purchasing card program performance audit	August 30, 2016	July 25, 2017
North Dakota University System space utilization study performance audit	January 3, 2019	March 6, 2017
North Dakota University System technology security audit and vulnerability assessment	December 21, 2016	March 6, 2017
Nursing, State Board of	June 30, 2016	January 10, 2018
Occupational Therapy Practice, State Board of	June 30, 2015 and 2014	July 25, 2017
Oilseed Council, North Dakota	June 30, 2016 and 2015	July 25, 2017
PACE fund	June 30, 2016 and 2015	July 25, 2017
PACE fund	June 30, 2017 and 2016	January 10, 2018
Parks and Recreation Department	June 30, 2017 and 2016	June 27, 2018
Peace Officer Standards and Training Board	December 31, 2016 and 2015	June 27, 2018
Plumbing, State Board of	June 30, 2017 and 2016	June 27, 2018
Potato Council, North Dakota	June 30, 2016 and 2015	July 25, 2017
Private Investigation and Security Board	December 31, 2016 and 2015	June 27, 2018
Protection and Advocacy Project	June 30, 2016 and 2015	July 25, 2017
Public Employees Retirement System	June 30, 2016 and 2015	July 25, 2017
Public Employees Retirement System	June 30, 2017 and 2016	June 27, 2018
Public Employees Retirement System - Schedule of employer allocations and other post-employment benefits amounts by employer	June 30, 2017	June 27, 2018
Public Employees Retirement System - Schedule of employer allocations and pension amounts by employer	June 30, 2016	July 25, 2017
Public Employees Retirement System - Schedule of employer allocations and pension amounts by employer	June 30, 2017	June 27, 2018
Public Finance Authority	December 31, 2016 and 2015	July 25, 2017
Public Finance Authority	December 31, 2017 and 2016	June 27, 2018
Public Instruction, Department of	June 30, 2017 and 2016	June 27, 2018
Public Service Commission	June 30, 2017 and 2016	October 3, 2018
Racing Commission, North Dakota	June 30, 2017 and 2016	June 27, 2018
Real Estate Commission, State	June 30, 2016 and 2015	July 25, 2017
Rebuilders loan program	June 30, 2016 and 2015	July 25, 2017
Rebuilders loan program	June 30, 2017 and 2016	January 10, 2018
Respiratory Care, State Board of	June 30, 2017 and 2016	October 3, 2018
Retirement and Investment Office, State	June 30, 2016 and 2015	July 25, 2017
Retirement and Investment Office, State	June 30, 2017 and 2016	June 27, 2018
Retirement and Investment Office, State - Schedule of employer allocations and pension amounts by employer	June 30, 2016	July 25, 2017
Retirement and Investment Office, State - Schedule of employer allocations and pension amounts by employer	June 30, 2017	June 27, 2018
School construction assistance revolving loan fund	June 30, 2017	January 10, 2018
Secretary of State	June 30, 2016 and 2015	July 25, 2017
Securities Commissioner	June 30, 2016 and 2015	July 25, 2017
Seed Department, State	June 30, 2016 and 2015	July 25, 2017
Soybean Council, North Dakota	June 30, 2016 and 2015	July 25, 2017
Soybean Council, North Dakota	June 30, 2017 and 2016	January 10, 2018
State Auditor	June 30, 2017 and 2016	January 10, 2018
State College of Science, North Dakota	June 30, 2017 and 2016	June 27, 2018
State Fair Association, North Dakota	September 30, 2016 and 2015	July 25, 2017
State Fair Association, North Dakota	September 30, 2017 and 2016	January 10, 2018
State Treasurer	June 30, 2017 and 2016	June 27, 2018
Statewide Comprehensive Annual Financial Report	June 30, 2016	July 25, 2017
Statewide Comprehensive Annual Financial Report	June 30, 2017	June 27, 2018
Statewide single audit	June 30, 2016 and 2015	July 25, 2017
Student loan trust	June 30, 2016 and 2015	July 25, 2017
Student loan trust	June 30, 2017 and 2016	January 10, 2018
Tax Commissioner	June 30, 2017 and 2016	October 3, 2018
Tobacco Prevention and Control Policy, Center for	June 30, 2017 and 2016	January 10, 2018
Transportation, Department of	June 30, 2017 and 2016	October 3, 2018
University and School Lands, Board of	June 30, 2016 and 2015	July 25, 2017
University and School Lands, Board of	June 30, 2017 and 2016	January 10, 2018

Agency	Audit Report Date	Meeting Date Accepted
University and School Lands, Board of - Department of Trust Lands trust assets and department resources, and unclaimed property; and Energy Infrastructure and Impact Office of the Department of Trust Lands performance audit followup	May 25, 2018	June 27, 2018
University of North Dakota	June 30, 2017 and 2016	October 3, 2018
University of North Dakota continuity of operations planning performance audit	September 11, 2017	January 10, 2018
Valley City State University	June 30, 2017 and 2016	June 27, 2018
Valley City State University emergency preparedness performance audit	October 10, 2017	January 10, 2018
Veterans' Affairs, Department of	June 30, 2016 and 2015	July 25, 2017
Veterans' Affairs, Department of performance audit	March 28, 2018	June 27, 2018
Veterans' Home	June 30, 2017 and 2016	October 3, 2018
Veterans' Home performance audit	February 10, 2018	June 27, 2018
Water Commission, State	June 30, 2017 and 2016	June 27, 2018
Wheat Commission, State	June 30, 2016 and 2015	July 25, 2017
Williston State College	June 30, 2017 and 2016	October 3, 2018
Williston State College emergency preparedness performance audit	February 5, 2018	June 27, 2018
Workforce Safety and Insurance	June 30, 2016 and 2015	July 25, 2017
Workforce Safety and Insurance	June 30, 2017 and 2016	January 10, 2018

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 2019 legislative session. Legislative rules also are reviewed and updated under this authority. The Legislative Management also delegated to the committee the Legislative Management's:

1. Duty under Section 54-03-26 to determine the computer usage fee for legislators, and the authority to establish a policy under which a legislator may purchase the computer used by that legislator upon replacement of the computer by the Legislative Council;
2. Power and duty under Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents and to control permanent displays in Memorial Hall and use of the legislative chambers;
3. Responsibility under Section 54-03-20 to make recommendations to adjust legislative compensation amounts;
4. Responsibility under Section 54-03-20 to establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session;
5. Responsibility under Section 54-60-03 to determine which standing committees will receive a report from the Commissioner of Commerce on goals and objectives of the Department of Commerce;
6. Responsibility under Section 46-02-05 to determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws;
7. Responsibility under Section 4.1-44-04 to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees;
8. Responsibility under Section 4.1-36-04 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, § 5, and 2011 Session Laws Chapter 1, § 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.

Committee members were Representatives Al Carlson (Chairman), Larry Bellew, Kathy Hogan, Corey Mock, and Don Vigesaa and Senators John Grabinger, Joan Heckaman, Ray Holmberg, Jerry Klein, Dave Oehlke, and Rich Wardner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

LEGISLATIVE SPACE AND CAPITOL FACILITIES IMPROVEMENTS

Due to funding limitations, the committee did not consider any legislative space improvement or renovation projects. The committee was informed a fire inspection of the legislative wing found no violations of code provisions due in part to the Legislative Council staff becoming involved in the inspections and addressing past violations.

The committee received a report from a representative of the Highway Patrol regarding Capitol security. Since 2016, entry to the Capitol has been limited to access cards for employees and officials, and the public has been required to enter through a secured entrance with a magnetometer and be subject to a visual inspection of bags and purses. According to the report, Capitol security officers screened an average of 700 to 1,000 visitors per day during the 2017 legislative session. The representative of the Highway Patrol expressed support for maintaining the security protocols and projecting a security presence to discourage any attempts to bring weapons into the building.

Members of the committee encouraged the Highway Patrol to explore solutions to provide efficient public access at multiple entrances to the building near public parking areas. The committee also requested the Facility Management Division to provide additional and improved directional signage to aid Capitol visitors in parking and entering the building.

The representative of the Highway Patrol requested permission to install security cameras in the House and Senate Chambers. Although committee members expressed concerns with respect to privacy in the chambers, the committee was assured the cameras would be pixelated when zoomed close to a legislator's desk. The committee approved the request of the Highway Patrol to install security cameras in the House and Senate Chambers on the condition the video be pixelated when zoomed close to desks.

The committee received a report from the Facility Management Division regarding the deterioration of the Capitol's west parking lot, which is the parking area reserved for legislative use during legislative sessions. Because other parking lots and Capitol complex roads were scheduled for repair, the representative of the Facility Management Division reported the west parking lot could be scheduled for a 2-inch overlay before the 2019 legislative session. The committee expressed its support for the completion of the parking lot overlay project.

The committee also received reports regarding the upgrade of Capitol elevators, which is expected to be completed before the convening of the 2019 legislative session.

The committee received reports regarding the construction of a new residence for the Governor. Senate Bill No. 2304 (2015) appropriated $5 million for the construction of a new residence for the Governor. Of that appropriation, $1 million was to come from donations. The committee was informed the Friends of the Residence fundraising committee had not raised the full $1 million in donations. However, the residence was completed with some modifications from the original plans. The committee also was informed the landscaping on the property has not been completed and the executive branch had plans to hire a landscape architect for future landscape work, which would be considered a project separate from the construction of the residence. Committee members expressed concerns the planned extensive landscaping project would be contrary to the intent of Senate Bill No. 2304.

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 1-2, 2018, and November 7-8, 2019; and use of the Senate or House Chamber by the Dakota Alliance Youth and Government program on October 18-19, 2018 (the event was canceled by the sponsor). Because the request did not conform with the usage guidelines, the committee did not approve a request to use the Senate Chamber for 2 days to film a portion of a movie.

Under the guidelines, any permanent display in Memorial Hall is to be reviewed annually. Since removal of two statues and a replica of the Liberty Bell in 1984, Memorial Hall does not contain any permanent display. (The Liberty Bell is on display in the entrance/commons area of Century High School in Bismarck.)

Legislative Committee Rooms

Joint Rule 804 provides 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 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 legislative media room 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 ETHICS COMMITTEE

Legislative Code of Ethics

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 (now Legislative Procedure and Arrangements) 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.

WORKPLACE HARASSMENT POLICY

In response to numerous reports of sexual harassment incidents throughout the country involving legislators or others involved with the legislative process, the committee reviewed Joint Rule 901, which is a policy providing a definition of sexual harassment and stating sexual harassment will not be tolerated. The committee generally agreed Joint Rule 901 does not provide adequate guidance and procedures with respect to reporting and responding to harassment complaints.

The committee reviewed a draft policy addressing workplace harassment. Under the proposal, an individual who believes he or she has been subjected to any type of workplace harassment is encouraged to report the conduct to a designated contact person. The policy specifies appropriate contact persons, including the Majority and Minority Leaders and designees of the opposite gender. The policy provides procedures for investigating complaints and sanctions for violations of the policy. The policy allows for the contracting of an independent investigator or the investigation of complaints by a review panel appointed by the Majority and Minority Leaders, with a fifth member selected by the four members appointed by the leaders.

Committee members generally agreed a policy that provides flexibility in reporting alleged violations which also includes an assurance of a fair and complete investigation is important to protecting the safety and job security of alleged victims and those alleged to have violated the policy. The committee also recognized the need to provide guidance for those investigating a complaint and requested a checklist for accepting and investigating complaints. There was general consensus among committee members that harassment of any kind will not be tolerated and that education regarding the workplace harassment policy is a necessary component of the policy.

The committee approved the *North Dakota Legislative Assembly Policy Against Workplace Harassment* and the *Checklist for Intake and Investigations Under the North Dakota Legislative Assembly Policy Against Workplace Harassment* for receiving and investigating complaints. The committee also recommends an amendment to Joint Rule 901, which incorporates the policy and checklist into the rule and encourages any individual subjected to workplace harassment to contact the Senate Majority Leader or Minority Leader or a designee of the opposite gender, or the House of Representatives Majority Leader or Minority Leader or a designee of the opposite gender.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. No specific questions or issues related to legislative rules from the 2017 legislative session were brought to the attention of the committee. However, the committee recommends an amendment to Joint Rule 901 to address the adoption of the *North Dakota Legislative Assembly Policy Against Workplace Harassment*.

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. Representatives of the media, as determined under Joint Rule 803, 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 2017 legislative session, 11 entities paid to receive a set of bills and resolutions from the bill and journal room, 3 entities paid to receive 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 2019 legislative session--$300 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and re-engrossed bills and resolutions; $150 for a set of daily journals of the Senate and House; and $85 for the permanent index to the Senate and House journals.

The number of subscribers has been decreasing, likely because all the documents are available on the legislative branch website. The committee continued the policy provided under Joint Rule 603 that a person may not receive more than five copies of a limited number of bills and resolutions without charge. The committee also reduced the number of copies of bills and resolutions and daily journals to be printed due to the number of those documents remaining at the

end of the 2017 legislative session and because the bill and journal room employees are able to print additional documents upon demand. The reduction in the number of bills and resolutions and daily journals requested was attributed largely to the availability of documents online, and the use of the legislative bill tracking service and the *North Dakota Legislative Daily* application.

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. No one paid the $565 subscription fee to receive the reports in 2017.

The committee determined printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 2019 bill status reports and pay a $550 subscription fee.

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 agreed state agencies and institutions should be encouraged to access the information from the legislative branch website.

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, 7 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 66th 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 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 committee recommended the 2019-21 biennium budget of the Legislative Assembly include funding for changes to legislative compensation to provide for adjustments of 2 percent in each year of the 2019-21 biennium, subject to revision if necessary during the 2019 legislative session to equal the percentage changes provided for state employee salary increases, and the necessary related statutory changes.

Legislator Expense Reimbursement Policy

Section 26 of Article XI of the Constitution of North Dakota provides 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 $1,758 per month as reimbursement for lodging for the 2019 legislative session.

The committee made no changes to the legislative expense reimbursement policy that was in place for the previous four 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.

LEGISLATIVE INFORMATION TECHNOLOGY

Information Technology Initiatives

Cybersecurity Awareness

The committee received reports regarding online cybersecurity awareness training for legislators. The Majority and Minority Leaders agreed to contact caucus members to encourage legislators to complete the annual training. The committee also approved including cybersecurity awareness training in the mandatory training sessions before new legislators are issued laptops and tablets.

Scanned Testimony

The committee received a report regarding the pilot project conducted during the 2017 legislative session in which interns for two standing committees scanned testimony and placed the testimony in an electronic folder that could be accessed by committee members. Although members of the committees generally found the electronic testimony to be useful, it was suggested placing the testimony in the Legislator's Automated Work Station (LAWS) system would be more useful in allowing all legislators to review the testimony when considering bills on the floor.

The committee was informed the pilot project could be expanded to include additional standing committees at a cost of approximately $900 per committee room - the cost of adding a printer with a scanner. In addition, to make changes to the LAWS system to include the electronic testimony would cost approximately $15,000.

The committee authorized proceeding with the electronic scanning pilot project with at least four committees and enhancing the LAWS system to include electronic testimony.

Bill Drafting System

The committee was informed the legislative bill drafting system (LEGEND) core upgrade will be operational before the 2019 legislative session.

Information Technology Department Services

The committee received a report regarding the use of the executive branch Information Technology Department services. The report indicated executive branch initiatives, including committing the state to a cloud computing environment and unification of the Information Technology Department and other executive branch information technology personnel, were moving forward without significant input from the legislative branch. While expressing support for organizational efficiencies and cost-savings, the committee agreed mission-critical legislative branch applications, such as the LEGEND system, should not be transferred to the cloud.

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--a legislator's data costs associated with the legislator's 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.

During the 2013-14 interim, the committee reviewed the effects of the November 2012 policy. This 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. The committee approved discontinuance of the November 2012 policy and approved a $90 per month information technology stipend for legislators who sign an agreement to use the stipend for technology-related costs. The policy eliminated the need for split billing and state involvement with reimbursements. The committee recognized 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.

The committee made no changes to the data plan reimbursement policy.

Personal Computer Use Policy

The committee reviewed the *Policy on Use of Personal Computers by Legislators*. 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 approved a change in the policy to require legislators to complete training courses, including training regarding cybersecurity awareness.

Legislator Computer Training

The organizational session agenda approved by the committee continues the computer training classes for returning legislators beginning at 9:00 a.m. on Monday, December 3, 2018. The agenda also provides for a computer distribution and training session for new legislators at 3:15 p.m. on Monday, December 3, 2018, in addition to the traditional training sessions for new legislators on Wednesday, December 5, 2018. The agenda also includes laptop computer and tablet training sessions on Tuesday and Wednesday, December 4-5, 2018, for returning legislators. The training sessions for new legislators include training related to cybersecurity awareness.

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 2019 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 legislative 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 Sanford Health 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 2019 legislative session as provided through the doctor of the day program by the North Dakota Medical Association during previous 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 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 is included in the information packets distributed to newly elected legislators during the organizational session. During the 2013-14 interim, 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. The upgrade to the higher-quality leather brief bag was approved with the intent the bags would last 4 years.

The committee considered the purchase of additional leather brief bags for new legislators and for replacement of worn bags. However, there were members of the committee who expressed support for purchasing less expensive canvas computer bags or backpacks to replace the heavier leather bags. The committee reviewed three types of canvas computer bags and approved the purchase of a canvas computer tote that can be used as a brief bag or backpack, and which includes a built-in power bank that allows the charging of two devices.

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. In addition, a legislator may request a key fob that will provide the same access to the building.

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 legislators.

Legislator Photographs

The committee approved the invitation to bid for photography services to the 66th Legislative Assembly. The invitation to bid contained generally the same specifications as the contract for the 65th Legislative Assembly. The photographs of legislators are to be taken during the organizational session in 2018, 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 19, 2018, 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 15, 2019.

The invitation to bid was sent to 449 photography firms in the state.

Five photographers submitted bids, one of which was received after the deadline. The conforming bids were: Anderson Photography, Crosby, $4,000 and $15 for each additional 11 x 14 inches frame; Jesse Knutson Photography, Bismarck, $4,650 and $20 for each additional frame; LPT Images, Mandan, $12,872.50 and $60 for each additional frame; and Robbins-Arlien LLC, Bismarck, $24,937.50 and $49 for each additional frame. The committee awarded the contract to Anderson Photography.

Session Employee Positions

The committee reviewed the number of employee positions during the 2017 legislative session and historical changes in legislative employee positions since 1993. 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. During the 2015-16 interim, the committee recommended a total of 84 session employees--37 Senate employees and 47 House employees. The actual number of employee positions during the 2017 legislative session was 36 in the Senate and 45 in the House.

The committee reviewed and approved a legislative session employee position plan that proposed 37 Senate employee positions and 46 House employee positions during the 2019 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 employment of a parking lot attendant by each house.
- Continued employment of the supply room coordinator by the Senate.

- Continued employment of the number of assistant sergeants-at-arms at the 2017 level.
- Reduced the number of House assistant committee clerks from three to two.

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 2017 legislative session. The committee received information indicating session employee compensation increases in recent sessions were reflective of average pay increases authorized for state employees. Because state employees were not authorized salary increases in 2017 and 2018, the committee did not approve general increases for session employees for the 2019 legislative session. The committee recommended increasing the compensation of the Secretary of the Senate and the Chief Clerk of the House by $5 per day because those positions have the responsibility of supervising session employees and the positions were paid only $5 per day more than the next highest paid positions.

Compensation will range from $115 to $201 per day ($14.38 to $25.12 per hour based on an 8-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 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 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 2017 legislative session, except for the addition of cybersecurity awareness training. 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 reduced as appropriate to meet workload.

The committee approved an invitation to bid for services during the 2019 legislative session to provide 3.5 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 services were collocated in the bill and journal room.

The invitation to bid was sent to secretarial services providers in the Bismarck/Mandan area. The committee received two bids--Dakota Staffing Solutions bid $564.20 per day and Spherion Staffing LLC bid $564.02 per day for approximately 75 days during the legislative session for 3.5 employees. Each bidder also provided a bid for 1 employee for 14 days before the convening of the legislative session. For that portion of the bid, Dakota Staffing Solutions bid $165.20 per day and Spherion Staffing LLC bid $158.92 per day. 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 LLC to provide secretarial, telephone message, and bill and journal room services during the 2019 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 2016. The policy points out 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 66th Legislative Assembly, with at least 10 intern positions allocated to the University of North Dakota School of Law for assignment to the 3-day and 2-day standing committees. The committee authorized the Legislative Council to work with representatives of the School of Law to develop an approved reimbursement policy, with a maximum reimbursement of $3,500 per month for the 4-month program.

Legislative Tour Guide Program

During the past 21 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; however, upon request, other groups have been placed on the tour schedule. The committee approved the continuation of the tour guide program for the 2019 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 2019 legislative session.

The committee authorized the Legislative Council staff to notify all legislators they have until December 31, 2018, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2019 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2018 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 returning 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 approved including cybersecurity awareness training as part of the computer training sessions for new legislators. The committee also approved inclusion of training related to the *North Dakota Legislative Assembly Policy Against Workplace Harassment* as part of the organizational session ethics presentation.

State of the State Address

During the 2017 legislative session, the House and Senate convened in joint session at 1:00 p.m. on the 1st legislative day. Three escort committees were appointed - one for the Lieutenant Governor, one for the Chief Justice of the Supreme Court, and one for the Governor and First Lady. After the Chief Justice administered the oath of office to elected officials of the executive and judicial branch, the Governor presented the 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 1st legislative day of the 2019 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 be held at 11:00 a.m. on the 1st legislative day.

Tribal-State Relationship Message

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to address the 66th Legislative Assembly at 10:00 a.m. on the 1st legislative day.

Agricultural Commodity Promotion Groups Report

The committee reviewed Section 4.1-44-04, 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 Friday, January 11, 2019, 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 4.1-36-04, which requires the Agriculture Commissioner to submit a biennial report to a joint meeting of the House and Senate Agriculture Committees on the status of the pesticide container disposal program. The committee determined the report should be made on the same day the committees receive the agricultural commodity promotion groups report--Friday, January 11, 2019.

Commissioner of Commerce Report

The committee reviewed Section 54-60-03, which requires the Commissioner of Commerce to report on the Department of Commerce's goals, objectives, and activities to a standing committee of each house as determined by the Legislative Management. The committee determined the report should be made to the Industry, Business and Labor Committees on Wednesday, January 9, 2019.

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 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.

CENSUS DATA REDISTRICTING PROJECT

The committee received information regarding participation in Phase 2 of the Census Redistricting Data Program. Phase 2 is a voluntary program in which states may provide voting district, or precinct, boundary information to the United States Census Bureau. The committee authorized the Legislative Council to participate in the Phase 2 program, which the Legislative Council completed within the time allotted by the Census Bureau.

LEGISLATIVE REVENUE ADVISORY COMMITTEE

Section 7 of Senate Bill No. 2001 (2017) would have created a legislative revenue advisory committee to monitor state revenues and to review revenue forecasts; however, the section was vetoed by the Governor. The committee would have consisted of the Majority and Minority Leaders of the House and Senate, the Chairmen of the House and Senate Appropriations Committees, one member appointed by the House Majority Leader, and one member appointed by the Senate Majority Leader. Although the Governor vetoed the section, the Legislative Management appointed a legislative revenue advisory committee and assigned the committee the responsibility to study state revenues and state revenue forecasts.

Committee members were Senators Ray Holmberg (Chairman), Dwight Cook, Joan Heckaman, and Rich Wardner and Representatives Larry Bellew, Al Carlson, Jeff Delzer, and Corey Mock.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

REVENUE FORECASTING AND ADJUSTMENTS

Revenue Forecasting Process

The committee reviewed the revenue forecasting process, including the responsibilities of the Office of Management and Budget (OMB) and the Legislative Assembly. Historically, OMB has had the primary responsibility to prepare revenue forecasts for consideration in developing the state budget. During each biennium, OMB prepares three revenue forecasts including a July preliminary revenue forecast issued prior to the start of the legislative session, a December executive budget revenue forecast presented during the organizational session, and a February or March revised revenue forecast presented to the Appropriations Committees during the legislative session. The Office of Management and Budget contracts for economic advisory services, currently with Moody's Analytics, to provide economic projections as a basis for developing the revenue forecasts.

The Legislative Assembly is responsible for approving the state budget, including the revenue forecast. The legislative revenue forecast prepared at the end of each legislative session includes the base revenue forecast and any legislative changes. The base revenue forecast may include any of the forecasts prepared by OMB or a modified version of the forecasts. Legislative changes may include tax incentives and exemptions, tax rate changes, or transfers from other state funds.

Recent Revenue Forecast Adjustments

The committee reviewed information regarding recent adjustments to revenue forecasts, including adjustments to the 2015-17 biennium budget and the 2017-19 biennium budget. In January 2015, the Legislative Assembly adjusted the December 2014 executive budget revenue forecast after oil prices and oil activity decreased significantly. The revenue adjustments reduced the 2015-17 biennium estimated general fund beginning balance by $130 million and reduced the estimated 2015-17 biennium general fund revenues by $550 million. In addition, the 2015 Legislative Assembly adopted adjustments to oil price and oil production assumptions resulting in a decrease of approximately $4 billion related to the 2015-17 biennium oil tax revenue forecast.

Due to the decrease in oil activity during the 2015-17 biennium, general fund revenue collections were less than forecasted. In February 2016 OMB released a revised forecast resulting in a decrease of approximately $1 billion in general fund revenues. The oil tax revenue forecast also was revised resulting in a decrease of approximately $970 million. The revisions to the general fund revenue forecast allowed the Governor to access the budget stabilization fund to provide for a transfer of $498 million. The Governor also reduced agency budgets by 4.05 percent resulting in a transfer of $72 million from the foundation aid stabilization fund to the general fund to offset the reduction for state school aid.

In August 2016 the Governor ordered a special legislative session to address additional budget challenges. The Legislative Assembly adopted revenue adjustments during the August 2016 special legislative session decreasing general fund revenues by approximately $400 million compared to the February 2016 revised revenue forecast. The August 2016 legislative revenue forecast also provided for additional transfers from the budget stabilization fund to the general fund, a transfer of $100 million from the Bank of North Dakota profits to the general fund, and recognized 2015-17 biennium unspent general fund appropriation authority of approximately $20 million. However, due to a stabilization in oil activity, the oil tax revenue forecast was increased by approximately $500 million compared to the February 2016 revised revenue forecast.

In January 2017 the Legislative Assembly adopted a legislative forecast, which was lower than the December 2016 executive budget revenue forecast, to reflect current economic conditions. Excluding the adjustments for proposed statutory changes, the January 2017 legislative forecast reduced the 2017-19 biennium general fund executive forecast revenues by $238 million, including $67 million related to the beginning balance and $171 million related to ongoing general fund revenues. The major reductions to ongoing general fund revenues included $146 million related to sales and use tax collections and $20 million related to individual income tax collections for the 2017-19 biennium. The January 2017 legislative forecast also decreased the oil tax revenue collections by approximately $330 million based on a lower oil price for the 2017-19 biennium.

In March 2017 the Appropriations Committees adopted the March 2017 revised revenue forecast prepared by OMB with an additional reduction of $10 million to the 2017-19 biennium beginning balance related to lower 2015-17 biennium sales and use tax collections. The March 2017 legislative revenue forecast reduced the 2017-19 biennium general fund revenue forecast by approximately $160 million compared to the January 2017 legislative forecast.

STATE REVENUES AND STATE REVENUE FORECASTS STUDY

The Legislative Management assigned the committee the responsibility to study state revenues and state revenue forecasts. The committee received information on current economic trends, including a short-term outlook from industry representatives and revenue collections from state agencies. The committee also received information from a consultant regarding state revenue forecasts.

Information from Industry Representatives

The committee received information from the North Dakota Stockmen's Association, the North Dakota Wheat Commission, and the North Dakota Soybean Council regarding the status of the agriculture industry. Drought conditions in the summer of 2017 negatively impacted wheat production and cattle inventories in western North Dakota resulting in financial losses for some farmers and ranchers. Farmers and ranchers anticipate moderate profitability in 2018 as wheat production increases and cattle inventories stabilize. Soybean exports from the United States to Southeast Asia decreased significantly in 2018 related to trade tariffs. The uncertainty related to global trade issues also caused a decrease in soybean prices.

The committee received information from the North Dakota Petroleum Council regarding the status of the oil and gas industry. Oil companies spend approximately $292 million per week on oil well development in the Bakken Formation. Approximately $200,000 of sales tax revenue is collected from each completed oil well, and approximately 80 oil wells are completed per month resulting in $16 million of sales tax revenue per month for the state. Oil and gas development activity is anticipated to be stable through the 2019-21 biennium if West Texas Intermediate oil prices remain approximately at the $70 per barrel level. However, challenges in oil companies' operations include workforce shortages and natural gas capture requirements.

The Automobile Dealers Association of North Dakota, the North Dakota Implement Dealers Association, and the Associated General Contractors of North Dakota provided information to the committee regarding other industry trends. Automobile sales slowed in 2018, but parts and repair services have grown. Farm equipment sales were strong in early 2018, but remain lower overall compared to peak sales in 2013. Rising interest rates may impact automobile dealers' profitability as costs increase to finance inventory and floor models. Profitability in the construction industry has been limited in 2018 because bids for projects have been more competitive. Construction activity in North Dakota grew faster than the United States average from 2008 to 2015. From 2015 to 2018, construction activity in North Dakota decreased while the United States average increased.

Information from State Agencies

The committee received information from the Department of Mineral Resources, the North Dakota Pipeline Authority, and Job Service North Dakota regarding oil and gas development activities. Oil drilling rigs are primarily located in Dunn, McKenzie, Mountrail, and Williams Counties, but some drilling rigs have been moved to other counties in which drilling has become economical with higher oil prices. Oil production in July 2018 surpassed 1.2 million barrels per day, which is similar to the peak production levels during 2014. Oil companies are researching enhanced oil recovery methods. A 1 percent increase in oil recovery is estimated to produce an additional 3 billion barrels of oil. Additional oil production growth in North Dakota may be limited through the 2019-21 biennium because of export infrastructure constraints. Approximately 72 percent of the oil produced in North Dakota is exported from the state by pipeline. North Dakota's oil price discount related to transportation decreased from approximately $8 per barrel to $5 per barrel after the Dakota Access Pipeline began operations resulting in an additional $3 of revenue per barrel of oil when sold by producers. As a result of the higher oil prices received by oil producers, the state collected approximately $130 million more oil and gas tax revenues between June 2017 and June 2018. The increase in oil and gas development activity has led to an increase in the state's gross domestic product, which increased from $28.9 billion in 2007 to $55.5 billion in 2017. Workforce shortages are a challenge for oil and gas development activity.

Although wages have increased, the number of jobs has increased at a faster rate than the number of workers available in the labor force. Approximately one resume was submitted for every two job openings in June 2018. The unemployment rate in the core oil-producing counties was 2.2 percent in June 2018, and the statewide unemployment rate was 2.9 percent.

The Office of Management and Budget and the Tax Department provided information to the committee regarding tax revenue collections. The Office of Management and Budget, in cooperation with the Tax Department, an economic consultant, and an advisory council on revenue forecasting, traditionally develop three forecasts for state revenues each biennium. The Tax Department provides historical tax base statistics to the economic consultant, and the economic consultant uses economic modeling software to generate forecasted tax base statistics. The Tax Department applies effective tax rates and other adjustments to the forecasted tax base statistics to develop the general fund revenue forecast. Adjustments include changes in tax laws, such as the federal Tax Cuts and Jobs Act, the phase-in of the single sales factor corporate income apportionment method, and sales tax collections from online retailers. The committee was informed state income tax collections are estimated to decrease by $28.9 million for the 2019-21 biennium related to federal income tax reform.

The committee received information from the University of North Dakota and North Dakota State University regarding revenue forecasting. Key factors for effective forecasting include the frequency of the forecasts; involvement from legislators, agency staff, industry experts, and the public; awareness of any bias in the forecast; and the time horizon of the forecast. Long-term forecasts, which include projections for 2 or 3 bienniums beyond the next biennium, can provide additional information on trends or patterns. Population factors are important in economic models due to constraints imposed by net migration and workforce availability. Dynamic modeling of economic output can be used to compare alternate scenarios and the effects of economic change. North Dakota State University provided revenue forecasting services to the state during the 1970s and 1980s using high, low, and trend estimates.

State Revenue Forecasts

The committee received a report regarding best practices for revenue forecasting. The report, published by the Center on Budget and Policy Priorities, identifies five best practices for revenue forecasting, which include a consensus estimate, outside expertise, transparent assumptions, opportunities for public input, and a revision process. The report indicates two of the best practices, outside expertise and a revision process, are utilized in North Dakota.

The committee also received information regarding a budget outlook for the 2017-19 and 2019-21 bienniums. The budget outlook provides information on estimated revenues and appropriations of the general fund, including anticipated costs to continue various programs and sources of funding that may be available to address a budgetary shortfall. Based on the outlook, the estimated general fund balance for the end of the 2017-19 biennium is $65 million after a $153 million transfer to the budget stabilization fund. The preliminary estimated general fund shortfall for the end of the 2019-21 biennium is $471 million before any additional spending requests such as state employee salary increases, recommendations by the Governor, and legislative initiatives.

Consultant Services - IHS Markit

The committee issued a request for proposals for economic forecasting data and selected IHS Markit to provide consulting services. IHS Markit provided information regarding an overview of economic trends for the United States. IHS Markit also developed custom models to forecast sales and use tax collections, motor vehicle excise tax collections, individual income tax collections, and corporate income tax collections.

Economic Trends

The committee received information from IHS Markit regarding economic trends, including trends in the national economy, the oil industry, and the agriculture industry. Real gross domestic product in the United States is anticipated to increase by 2.9 percent in 2018, 2.7 percent in 2019, 1.9 percent in 2020, and 1.6 percent in 2021. Federal income tax reforms and federal spending may contribute to economic growth in the short term while rising interest rates and low unemployment may cause a slowdown in economic growth in later years. The tariffs imposed on trade have had a minimal impact on the national economy in 2018, but are a risk for future economic growth. Oil production in the United States is anticipated to increase at approximately the same rate as the increase in global demand, keeping prices stable. Capital investment may shift from the Permian Basin in Texas to the Bakken Formation because infrastructure constraints limit the growth of oil development in the Permian Basin. Argentina, Brazil, and the United States are the primary producers of soybeans, but demand has increased for soybeans from Brazil due to a drought in Argentina and tariffs imposed on imports from the United States. Farm income in the United States may decrease in the short term as a result of slowing exports of soybeans from the United States.

Forecasting Models

The forecasting models are based on data from IHS Markit's existing macroeconomic models for the United States as well as data from industry-specific forecasts for the agriculture and energy industries. The models use data from a variety of economic sectors, but the results primarily are based on two economic drivers for each tax type. The economic drivers have the strongest correlation between the economic activity and the tax collections. The primary economic drivers to forecast the sales and use tax collections are oil well completions and personal consumption expenditures. The motor vehicle excise tax collections are driven primarily by new car registrations and employment in the oil and gas industry. The primary economic drivers to forecast individual income tax collections are wage withholdings and property income. National corporate profits and oil prices are the primary drivers to forecast corporate income tax collections.

Forecasting Results

The committee received information from IHS Markit regarding the results from the forecasting models. The schedule below provides information on the 2017-19 biennium revised general fund revenue forecast based on estimates prepared by OMB and by IHS Markit.

2017-19 Biennium						
			Increase (Decrease)			
	OMB Forecast	IHS - Baseline Forecast	Amount	Percent	IHS - Pessimistic Forecast	IHS - Optimistic Forecast
Sales and use tax	$1,722,635,206	$1,703,892,406	($18,742,800)	(1.1%)	$1,608,006,506	$1,855,320,306
Motor vehicle excise tax	231,144,237	236,073,727	4,929,490	2.1%	223,923,747	237,377,757
Individual income tax	757,683,125	747,698,159	(9,984,966)	(1.3%)	737,823,157	750,061,545
Corporate income tax	164,894,170	186,241,185	21,347,015	12.9%	173,684,417	198,743,202
Total major tax types	$2,876,356,738	$2,873,905,477	($2,451,261)		$2,743,437,827	$3,041,502,810

The schedule below provides information on the 2019-21 biennium preliminary general fund revenue forecast based on estimates prepared by OMB and by IHS Markit.

2019-21 Biennium						
			Increase (Decrease)			
	OMB Forecast	IHS - Baseline Forecast	Amount	Percent	IHS - Pessimistic Forecast	IHS - Optimistic Forecast
Sales and use tax	$1,894,204,000	$1,805,141,200	($89,062,800)	(4.7%)	$1,529,393,900	$1,952,280,500
Motor vehicle excise tax	245,972,000	257,573,740	11,601,740	4.7%	229,512,160	265,103,690
Individual income tax	806,483,000	802,602,207	(3,880,793)	(0.5%)	755,218,255	833,535,301
Corporate income tax	95,486,000	194,056,153	98,570,153	103.2%	149,293,668	239,382,058
Total major tax types	$3,042,145,000	$3,059,373,300	$17,228,300		$2,663,417,983	$3,290,301,549

IHS Markit also provided information to the committee regarding forecasted oil prices and oil production. Based on IHS Markit's forecast, West Texas Intermediate oil prices are estimated to remain at about $70 per barrel through the 2019-21 biennium while oil production in the Bakken Formation is estimated to increase and then stabilize at approximately 1.35 million barrels per day by 2021.

Recommendation

The committee makes no recommendation regarding the study of state revenues and state revenue forecasts. However, IHS Markit will provide additional updates to the Appropriations Committees during the 2019 legislative session regarding economic forecasting data, including general fund revenue estimates, oil price estimates, and oil production estimates for the remainder of the 2017-19 biennium and the entire 2019-21 biennium.

NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned three studies:

- Section 7 of House Bill No.1008 (2017) directed a study of the impact of wind energy development on the environment, including consideration of the impact of wind energy development on the environment, property values, agriculture, aesthetic impacts, and the advantages and disadvantages of implementing legislation for pooling or unitization of wind resources similar to that of the oil and gas industry in North Dakota Century Code Chapter 38-08 and the necessary processes for the decommissioning of a wind energy project.
- Section 4 of Senate Bill No. 2156 (2017) directed a study on whether state and local level regulation of high-level radioactive waste disposal is consistent with applicable federal regulations, including how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits, the mechanisms for calling a special session to approve the depositing of high-level radioactive waste material in the state, the notice of disapproval requirements under federal law, special laws, local laws, and the feasibility and desirability of developing new statutes and regulations for subsurface disposal of waste and the storage and retrieval of material.
- Section 4 of Senate Bill No. 2286 (2017) directed a study on the cooperation and communication between the Public Service Commission (PSC) and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and public hearing process, including an examination of the impacts on relationships between landowners and the oil and gas industry, impacts on the efficiency of the siting process, impacts on the public input process, and impacts on compliance with, and enforcement of, political subdivision zoning ordinances.

The Legislative Management also delegated to the committee the responsibility to receive a report from the Energy and Environmental Research Center (EERC) regarding the results and recommendations of the pipeline leak detection study (Section 3 of 2017 House Bill No. 1347).

Committee members were Representatives Jay Seibel (Chairman), Dick Anderson, Roger Brabandt, Mike Brandenburg, Tom Kading, Vernon Laning, Alisa Mitskog, Todd Porter, Vicky Steiner, and Greg Westlind and Senators Bill L. Bowman, Diane Larson, Larry Luick, and Merrill Piepkorn.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

WIND ENERGY DEVELOPMENT

Background

General Jurisdiction of the Public Service Commission

Section 2 of Article V of the Constitution of North Dakota provides the PSC consists of three Public Service Commissioners and the powers and duties of the commissioners must be prescribed by law. Section 49-02-01 sets out the general jurisdiction of the PSC. That section provides the general jurisdiction of the commission extends to:

- Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
- Telecommunications companies engaged in the furnishing of telecommunications services as provided for in Chapter 49-21.
- Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
- Electric utilities engaged in the generation and distribution of light, heat, or power.
- Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
- All heating utilities engaged in the distribution of heat.
- Warehouse companies engaged in the marketing, storage, or handling of agricultural products.
- All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

Energy Conversion and Transmission Facility Siting Act

The 1975 Legislative Assembly passed Senate Bill No. 2050, the North Dakota Energy Conversion and Transmission Facility Siting Act, codified as Chapter 49-22. This chapter provides areas of protection to individual landowners in the siting of transmission facilities, including:

- Requiring the PSC, in evaluating an application for a certificate of site compatibility, to consider the:

  Effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment;

  Effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites;

  Potential for beneficial uses of waste energy from a proposed energy conversion facility;

  Adverse direct and indirect environmental effects that cannot be avoided if the proposed site or route be designated;

  Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects;

  Irreversible and irretrievable commitments of natural resources if the proposed site, corridor, or route is designated;

  Direct and indirect economic impacts of the proposed facility;

  Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route;

  Effect of the proposed site or route on areas that are unique because of biological wealth or because the areas are habitats for rare and endangered species; and

  Problems raised by federal agencies, other state agencies, and local entities.

- Requiring the PSC to hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit.
- Prohibiting a certificate of site compatibility for an energy conversion facility from superseding or preempting any local land use, zoning, or building rules, regulations, or ordinances and prohibiting a site from being designated if the site violates local land use, zoning, or building rules, regulations, or ordinances.

Wind Energy Jurisdiction

Section 49-02-24 authorizes the PSC to adopt rules to establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within North Dakota and with similar entities in other states. Renewable electricity and recycled energy include electricity generated from facilities using the wind as the source of energy for producing electricity.

Section 49-02-27 requires the PSC to adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules must address:

- The anticipated life of the project;
- The estimated decommissioning costs in current dollars;
- The method and schedule for updating the costs of the decommissioning and restoration;
- The method of ensuring that funds will be available for decommissioning and restoration;
- The anticipated manner in which the project will be decommissioned and the site restored; and
- Present and future natural resource development.

Section 49-22-05.1 requires the PSC to develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices, which may be considered in the evaluation and designation process.

Renewable Energy Council

The Renewable Energy Council consists of the Commissioner of Commerce or the commissioner's designee and six members appointed by the Governor. The Governor selects one member from each of the following industries--agriculture, biodiesel, biomass, wind, ethanol, and advanced biofuel and sugar-based biofuel.

Section 54-63-01 provides the purpose of the Renewable Energy Council is to recommend to the Industrial Commission the approval of grants, loans, or other financial assistance necessary or appropriate for funding, research, development, marketing, and educational projects or activities.

Under Section 54-63-03, the Industrial Commission may:

- Make grants or loans, and provide other forms of financial assistance as necessary or appropriate, to qualified persons for funding research, development, marketing, and educational projects or activities, feasibility studies, applied research and demonstrations, venture capital investments, and low-interest loans and loan buydowns to foster the development of renewable energy, including wind, biofuels, biomass, solar, hydroelectric, geothermal, and hydrogen, that is produced from the foregoing renewable energy sources.
- Execute contracts and all other instruments necessary or convenient for the performance of its powers and functions.
- Accept aid, grants, or contributions of money or other things of value from any source, to be held, used, and applied to carry out Chapter 54-63, subject to certain conditions.

WIND ENERGY PROPERTY RIGHTS

Background

Chapter 17-04 pertains to wind energy property rights and addresses wind option agreements, wind easements, and wind energy leases.

Wind Option Agreement

Section 17-04-01 provides a wind option agreement is a contract in which the owner of property gives another the right to produce energy from wind power on that property at a fixed price within a time period not to exceed 5 years on agreed terms. A wind option agreement is void and terminates if, within 5 years after the agreement commences, a certificate of site compatibility or conditional use permit has been issued, if required, and a transmission interconnection request is in process and not under suspension, have not occurred. If the requirements are not met by the owner of the wind option agreement, the owner of the energy rights may provide to the owner of the wind option agreement a notice of termination. Termination of the wind option agreement is effective 5 years after the wind option commences.

Wind Easements

Section 17-04-02 provides a wind easement means a right, whether stated in the form of a restriction, easement, covenant, or condition, in a deed, will, or other instrument executed by or on behalf of an owner of land or airspace for the purpose of ensuring adequate exposure of a wind power system to the winds. Section 17-04-03 allows a property owner to grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property.

Except for a wind easement, an interest in a resource located on a tract of land and associated with the production of energy for wind power on the tract of land may not be severed from the surface estate.

Wind Energy Leases

Section 17-04-05 provides a lease for wind energy purposes is void and terminates if, within 5 years after the lease commences, a certificate of site compatibility or conditional use permit has been issued, if required, and a transmission interconnection request is in process and not under suspension, have not occurred. A wind lease is presumed to be abandoned if a period of 36 consecutive months has passed with no construction or operation of the wind farm facility.

Wind Easement and Wind Energy Lease Requirements

Section 17-04-06 provides in a wind easement and a wind energy lease, the easement and lease:

- Must contain specific language informing the property owner of certain property owner rights.
- May not require either party to maintain the confidentiality of any negotiations or the terms of any proposed lease or easement except that the parties may agree to a mutual confidentiality agreement in the final executed lease or easement.
- Must preserve the right of the property owner to continue conducting business operations as currently conducted for the term of the agreement.
- May not make the property owner liable for any property tax associated with the wind energy facility or other equipment related to wind energy generation.
- May not make the property owner liable for any damages caused by the wind energy facility and equipment or the operation of the generating facility and equipment, including liability or damage to the property owner or to third parties.
- Must obligate the developer, owner, and operator of the wind energy facility to comply with federal, state, and local laws and regulations and may not make the property owner liable in the case of a violation.

- Must allow the property owner to terminate the agreement if the wind energy facility has not operated for a period of at least 3 years unless the property owner receives the normal minimum lease payments that would have occurred if the wind energy facility had been operating during that time.
- Must state clearly any circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments from the property owner.

Section 17-04-06 requires the owner of the wind energy facility to carry general liability insurance relating to claims for property damage or bodily injury arising out of the construction or operation of the wind energy facility project site and may include the property owner as an additional insured on the policy.

Testimony and Committee Considerations

The committee received testimony from a representative of the PSC regarding wind energy jurisdiction, wind energy development in North Dakota, siting requirements, and the rules governing decommissioning of commercial wind energy conversion facilities. The testimony indicated when siting energy conversion facilities and transmission facilities, the PSC ensures the location, construction, and operation of energy conversion facilities and transmission facilities produce minimal adverse effects on the environment and welfare of North Dakota citizens.

The committee was informed a facility needs a siting permit if the facility:

- Generates 50,000 kilowatts of electricity;
- Refines 100 million cubic feet or more of gas per day;
- Refines 50,000 barrels per day of liquid hydrocarbon products;
- Enriches uranium minerals;
- Is a 115 kilovolt and higher electric transmission line greater than 1 mile;
- Is a gas or liquid transmission pipeline; or
- Is a water line to or from an energy conversion facility.

The representative of the PSC informed the committee wind facilities are required to report progress toward meeting the 10 percent objective for renewable consumption to the PSC, and the PSC works with wind facility companies during the application process until enough information is received to hold a public hearing. According to the testimony, North Dakota's siting process and the laws and rules associated with the siting process are thorough, fair, and adequate. It was noted for purposes of what the PSC is authorized to consider in determining the merits of a siting project permit the siting process laws and rules do not have any defects or inefficiencies.

The committee received testimony from representatives of NextEra Energy Resources regarding the economic benefits of wind projects, wind energy development and marketing, federal production tax credits, environmental considerations for wind siting in North Dakota, and environmental permitting for wind energy facilities. The testimony indicated NextEra Energy Resources has invested over $1.9 billion to develop about 1,250 megawatts of wind projects in North Dakota and NextEra Energy Resources builds renewable energy projects when selected by an energy provider as part of a request for proposal (RFP) process. Over the last 5 years NextEra Energy responded to 11 different renewable energy RFPs from energy providers in North Dakota. The testimony indicated wind energy provides positive economic impacts for North Dakota through manufacturing, construction, and operation of wind farms including:

- 500 jobs created in 2016;
- $7.7 million in property taxes paid in 2016;
- $119 million in manufacturing activities in 2016; and
- $2.8 billion of total capital invested.

According to the testimony, impacts to agricultural uses are minimized through careful siting to balance landowner preferences and regulations. Impacts to prime farmland are regulated by the PSC and all landowner participation is voluntary. Landowners negotiate when specific infrastructure types will be allowed on their land. It was noted environmental constraints are one of many factors involved in wind siting. The PSC permitting process offers an opportunity for a complimentary state approach, and collaboration by state and federal agencies with the wind industry is important for any guidance document addressing wind impacts.

The committee received testimony from a representative of Ollson Environmental Health Management, regarding public health and safety practices for siting wind turbine projects. The testimony indicated considerable research has been conducted around the world on the potential for wind turbines to adversely impact health, and North Dakota's existing state and county permitting requirements ensure the protection of public health and safety.

The committee received testimony from representatives of North Dakota Farmers Union, North Dakota Farm Bureau, North Dakota Association of Counties, and the Northwest Landowners Association regarding local-level perspective and input on wind energy development, the impact of wind energy development on farmers and ranchers, and the impact of wind energy development on agriculture and rural communities. The testimony indicated the state has the ability to supply a significant amount of the nation's electricity needs by harnessing wind resources. Wind energy holds new income potential for farmers and rural landowners; and as a result, is important farmers and ranchers are educated on their rights and the issues that surround this industry. It was noted farmers and ranchers consider the crop damage payments appropriate and commend companies for acting in a fair and responsive manner. According to the testimony, North Dakota needs to embrace all energy sources, put everyone on a level playing field, and let the free market determine which energy sources are cost-effective. It was suggested North Dakota and local units of government should develop reasonable guidelines, not mandates or rules, while allowing local residents to decide what is best for the communities. The testimony indicated political subdivision budgets have been built around the wind tax policies. Any changes to remove the revenue stream would have a significant negative impact on budgets and taxpayers.

The committee discussed the adequacy of bonds required for decommissioning wind projects. Liens are placed on a landowner's property as a result of a wind developer failing to pay subcontractors. The committee was informed this is a serious concern, and ensuring the bonds required by the PSC are sufficient for decommissioning is a step toward protecting the landowner. The committee discussed requiring adequate reclamation of disturbed lands by wind developers. Although wind companies often are portrayed as having less of an environmental impact than other forms of energy development, it was noted any disturbance of topsoil can have an impact on agricultural productivity.

The committee received testimony from a representative of the Game and Fish Department regarding potential impacts and voluntary guidelines for avoidance, minimization, and offsetting impacts. The testimony indicated the direct and indirect impacts of wind development on wildlife include:

- Wildlife fatality due to collisions;
- Disturbance - Avoidance and displacement of wildlife;
- Habitat loss;
- Noise;
- Shadow flicker; and
- Traffic.

According to the testimony, the goal of the *North Dakota Native Wildlife Resources: Guidelines for Reducing Impacts from Wind Energy Development* is to avoid, minimize, and offset impacts by providing transparent and predictable tools for use by industry to plan and site turbines on the landscape to avoid and reduce impacts to native habitats, and to encourage development activities to occur outside high-priority areas.

The committee received testimony from representatives of Utility Shareholders of North Dakota, the PSC, and the Department of Agriculture regarding wind energy mitigation and mitigation options for unavoidable, direct, or indirect impacts. Because the PSC is required by law to ensure wind projects produce minimal adverse effects on the environment, the PSC must rely on the expertise of other agencies' specialized skill sets. It was noted the developer of a proposed project has a right to a hearing to dispute the findings. An offset package agreed to between the Game and Fish Department and the developer was cited as an example of cooperation and collaboration between state and private entities.

The representative from the Department of Agriculture contended a great deal of concern exists regarding the direct and indirect impacts to agricultural production from wind energy mitigation on agriculture producers. The testimony indicated companies are forced to pay a rate much higher than those charged in wetland mitigation with no correlation or reasonable answer to justify hundreds of thousands of dollars for small acreages. According to the testimony, North Dakota is setting an unsustainable precedent of requiring mitigation of agricultural land. It was noted the preference is to cease the mitigation practice and allow agriculture producers to work with developers to decide where and how to develop a project with minimal impacts. If mitigation is to be considered, it was noted, the process needs to be changed. It was suggested a committee of farmers, ranchers, and landowners could design criteria and a reasonable approach to mitigation.

Conclusion

The committee makes no recommendation regarding its study of the impact of wind energy development on the environment and on North Dakota landowners.

HIGH-LEVEL RADIOACTIVE WASTE DISPOSAL

Background

In 1979 the Legislative Assembly passed Senate Bill No. 2214, codified as Chapter 23-20.2, which placed jurisdiction over the storage or disposal of nuclear and other wastes with the Industrial Commission. Section 23-20.2-02 defines high-level radioactive waste material as the highly radioactive material resulting from the reprocessing of spent nuclear fuel, and other highly radioactive material, which contains fission products in sufficient concentrations to require permanent isolation under federal law, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste.

Section 23-20.2-03 grants the Industrial Commission, acting through the State Geologist, the authority to require the drilling, boring, excavating, and construction of facilities in a manner to prevent contamination and pollution of surface and ground water sources and the environment. This section also authorizes the commission to regulate the drilling, boring, excavating, and construction of all underground storage, retrieval, and waste disposal facilities; limit and prescribe the nature, quantity, and source of materials to be stored in, whether as waste or otherwise, or retrieved from any facility regulated by that chapter; and adopt and enforce rules and orders to effectuate the purposes of the chapter.

Section 23-20.2-04 prohibits the excavation, drilling, boring, or construction of an underground storage and retrieval facility or an underground waste disposal facility or the conversion of any existing facility for use in any activity regulated by Chapter 23-20.2, without a permit from the Industrial Commission. A permit may not be issued until after notice and a hearing and payment of a fee, not to exceed $1,000, for each permit in an amount set by the commission.

After a hearing on a permit application, the commission may deny the application and refund the license fee. A person denied a permit may appeal the denial by the commission in accordance with the Administrative Agencies Practice Act. Section 23-20.2-06 contains the penalties for a violation of Chapter 23-20.2.

Section 23-20.2-09(1) prohibits a person from depositing, causing or permitting to be deposited in this state, any radioactive waste material that has been brought into the state for that purpose unless prior approval has been granted by a concurrent resolution passed by the Legislative Assembly.

North Dakota Law

Senate Bill No. 2156 (2017) amended Section 23-20.2-09(1) to include a county's zoning approval may not preclude the disposal development if approved by the Legislative Assembly, but may regulate the size, scope, and location. The bill further amended Section 23-20.2-09 to prohibit a person from conducting any testing or exploration for the development of a storage or disposal facility for high-level radioactive waste material to be brought into the state unless prior approval has been granted by a concurrent resolution passed by the Legislative Assembly.

Federal Regulation

The federal Nuclear Waste Policy Act of 1982 established a comprehensive national program for the safe, permanent disposal of highly radioactive wastes. The Act, which was codified as 42 U.S.C. 108, defines high-level radioactive waste as the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste which contains fission products in sufficient concentrations; and other highly radioactive material that the federal Nuclear Regulatory Commission (NRC), consistent with existing law, determines by rule requires permanent isolation.

The Nuclear Waste Act has four enumerated purposes:

- To establish a schedule for the siting, construction, and operation of repositories which will provide a reasonable assurance the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and spent nuclear fuel as may be disposed of in a repository;
- To establish the federal responsibility and a definite federal policy for the disposal of high-level radioactive waste and spent fuel;
- To define the relationship between the federal government and state governments with respect to the disposal of high-level radioactive waste and spent fuel; and
- To establish a Nuclear Waste Fund, composed of payments made by the generators and owners of high-level radioactive waste and spent fuel, to ensure the costs of carrying out activities relating to the disposal of the waste and spent fuel will be borne by the persons responsible for generating the waste and spent fuel.

The Nuclear Waste Act requires the President of the United States to review each candidate site recommendation made by the Secretary of Energy. If, during the 60-day site submission period, the President fails to approve or disapprove the candidate site or fails to invoke the authority to delay the decision, the candidate site is considered approved, and the Secretary of Energy must notify the Governor and legislature or governing body of the affected Indian tribe of the approval of the candidate site by reason of the inaction of the President. The President also must submit a recommendation of the site to Congress.

The designation of a site as suitable for application for a construction authorization for a repository is effective at the end of the 60-day period beginning on the date the President recommends the site to Congress, unless the Governor and legislature of the state in which the site is located or the governing body of an Indian tribe on whose reservation the site is located has submitted to Congress a notice of disapproval. If any notice of disapproval of a repository site designation has been submitted to Congress after a recommendation for approval of the site is made by the President, the site must be disapproved unless, during the first period of 90 calendar days of continuous session of Congress after the date of the receipt by Congress of the notice of disapproval, Congress passes a resolution of repository siting approval and the resolution becomes law.

Testimony and Committee Considerations

The committee received testimony from a representative of Pierce County regarding state and local level regulation of high-level radioactive waste disposal and the size, scope, and location of high-level radioactive waste material deposits in the state. The testimony indicated in 2015 the EERC, in partnership with Battelle, pursued a funding opportunity with the United States Department of Energy to conduct a borehole field test to identify alternatives and conduct scientific and technological development to enable storage, transportation, and disposal of used nuclear fuel and wastes generated by existing and future nuclear fuel cycles. The EERC proposed to conduct the field test on school trust land. The testimony indicated Pierce County commissioners formally rejected the EERC's borehole field test in Pierce County because the lowest level of government should be consulted first and the exploration or the testing for the purposes of nuclear waste disposal must address the long-term implications of the eventual depositing.

The committee received testimony from a representative of the Department of Mineral Resources regarding state and federal regulation of high-level radioactive waste disposal, the federal location selection process for high-level radioactive waste material deposits, how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits, the mechanisms for calling a special legislative session to approve the depositing of high-level radioactive waste material in the state, and the notice of disapproval requirements under federal law. The testimony indicated Chapter 23-23.2 was created in 1979 to encourage the proper emplacement of material into subsurface strata for:

- Storage and retrieval of material (compressed air);
- Promoting the terminal disposal of municipal, industrial, and domestic waste. Waste not covered by the Underground Injection Control Program; and
- Subsurface disposal of high-level radioactive waste.

The testimony indicated the NRC regulates the production of radioactive source materials, nuclear reactors, nuclear materials, and radioactive waste. The NRC licenses high-level radioactive waste repositories. The Department of Energy is responsible for designing, constructing, operating, and decommissioning a permanent disposal facility for high-level radioactive waste. The United States Environmental Protection Agency developed standards for the protection of the general environment from offsite releases of radioactive material in repositories.

A representative from the Environmental Health Section of the State Department of Health indicated the three types of radioactive material are high-level, low-level, and technologically enhanced naturally occurring radioactive materials (TENORM). According to the testimony, North Dakota does not have any authority or role in regulating high-level radioactive materials because that regulatory authority belongs to the NRC. The NRC regulates the transportation, handling, disposal, and storage of high-level radioactive material while North Dakota has the authority to regulate low-level radioactive materials with oversight from the NRC. It was noted North Dakota, South Dakota, Arizona, and California, which are members of a compact, have located a site in Texas which takes the low-level radioactive waste from the four compact states on an annual basis. North Dakota generates about 12 to 14 tons of TENORM per quarter which is tracked according to state regulations.

The committee received testimony from a representative of the Geosciences Group Lead of the EERC regarding the EERC's relevant experience and observations with respect to the accommodation of scientific discovery. The committee was informed the activity proposed to take place in Pierce County was solely of a scientific and discovery nature and was designed to validate drilling technology in a geologic environment that met criteria defined by the Department of Energy. Specifically, the location offered the optimal ratio between thickness of sedimentary and crystalline rock for a

5-kilometer-deep drilling validation exercise. The testimony indicated the location selection did not consider aspects of any actual storage of high-level nuclear waste or the potential to seek a storage permit. The testimony indicated, contrary to widely spread misinformation and multiplied by unfounded speculation, there was never any implied or subversive intent to store, or promote the storage of, nuclear waste in Pierce County or any other location in North Dakota. According to the testimony, the active and aggressive misinformation campaign led to a county decision to deny a special use permit for the planned research. The committee was urged to consider carefully the unintended consequences of well-intended laws that may preclude the accommodation of scientific discovery.

Testimony from a representative of the North Dakota Association of Counties regarding local input and location of high-level radioactive waste material deposits in the state indicated local input and some local control is critical to this exceptionally sensitive area. According to the testimony, North Dakota counties were not prepared in 2016 when the Department of Energy announced an award of $35 million to explore North Dakota's deep geology to determine its potential for nuclear waste disposal. That exploratory well was to be located south of Rugby in Pierce County on state land. The testimony indicated, due to misperceptions and the lack of communication with local officials, it became evident any future exploration or eventual disposal would require more local government involvement. It was emphasized any future legislation regarding disposal of high-level radioactive waste must include a mechanism for local residents to have procedural input and involvement in the matter.

As a result of the testimony regarding the disposal of high-level nuclear waste in the state, the committee considered a bill to:

- Repeal Chapter 23-20.2 (Disposal of Nuclear and Other Waste Material);
- Create two new chapters of Century Code, one for high-level radioactive waste disposal and one for subsurface storage and retrieval of nonhydrocarbons;
- Designate the Industrial Commission as the point of contact with the Department of Energy and other federal agencies;
- Authorize the Industrial Commission to issue a notice of disapproval if the Legislative Assembly is not in session;
- To cover the costs of permit review, set the permit fee for a facility at not less than $800,000;
- Establish guidelines for reporting requirements, preventing pollution, reclamation, and bonds;
- Authorize the Industrial Commission to regulate drilling, excavating, construction, operation, and onsite inspections;
- Require an exploration permit from the Industrial Commission before exploring for a high-level radioactive waste facility and require a facility permit before operating a high-level radioactive waste facility;
- Authorize the Industrial Commission to deny an application if the activity poses a threat to human health or the environment or economic impacts;
- Establish a high-level radioactive waste fund into which funds from the federal government and permit fees and civil penalties are deposited;
- Create a high-level radioactive waste advisory council to advise the Industrial Commission and the Legislative Assembly; and
- Authorize counties to regulate the size, scope, and the location of a facility, but not to prohibit a facility permitted by the Industrial Commission.

Recommendation

The committee recommends Senate Bill No. 2037 to regulate the disposal and storage of high-level radioactive waste, permit the Industrial Commission to issue a notice of disapproval in regard to high-level radioactive waste disposal when the Legislative Assembly is not in session, and regulate subsurface storage and retrieval of nonhydrocarbons.

PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS

Background

General Jurisdiction of the Public Service Commission

Section 2 of Article V of the Constitution of North Dakota provides the PSC consists of three Public Service Commissioners and the powers and duties of the PSC must be prescribed by law. Section 49-02-01 sets out the general jurisdiction of the PSC. That section provides the general jurisdiction of the commission extends to:

- Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.

- Telecommunications companies engaged in the furnishing of telecommunications services as provided for in Chapter 49-21.
- Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
- Electric utilities engaged in the generation and distribution of light, heat, or power.
- Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
- All heating utilities engaged in the distribution of heat.
- Warehouse companies engaged in the marketing, storage, or handling of agricultural products.
- All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

Section 49-02-02 authorizes the PSC to require public utilities or other persons to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law. In addition the PSC may hold hearings on good cause or on its own motion.

Chapter 49-22 grants the PSC authority to issue certificates of site compatibility or route permits for energy conversion or transmission facilities.

Energy Conversion and Transmission Facility Siting Act

Chapter 49-22, the North Dakota Energy Conversion and Transmission Facility Siting Act, provides areas of protection to individual landowners in the siting of transmission facilities, such as:

- Including a statement of policy in which the Legislative Assembly declares "the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter."
- Requiring each utility that owns or operates, or plans within the next 10 years to own, operate, or start construction on any facility to develop an explicit 10-year plan and submit the plan to the PSC.
- Requiring the PSC, in evaluating an application for a certificate of site compatibility, to consider the:

  Effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment;

  Effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites;

  Potential for beneficial uses of waste energy from a proposed energy conversion facility;

  Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated;

  Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects;

  Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated;

  Direct and indirect economic impacts of the proposed facility;

  Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route;

  Effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species; and

  Problems raised by federal agencies, other state agencies, and local entities.
- Requiring the PSC to hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit.
- Allowing the PSC to appoint advisory committees to evaluate sites or corridors considered for designation.

- Prohibiting a certificate of site compatibility for an energy conversion facility from superseding or preempting any local land use; zoning; or building rules, regulations, or ordinances and prohibiting a site from being designated if it violates local land use; zoning; or building rules, regulations, or ordinances.
- Allowing any party aggrieved by the issuance of a certificate of site compatibility or transmission facility construction permit from the PSC, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, to request a rehearing by the commission.

North Dakota Law

2017 Legislation

Senate Bill No. 2286 (2017) amended Sections 49-22-03, 49-22-14.1, and 49-22-16, related to energy conversion and transmission facility siting. The bill was intended to provide efficiency to the PSC approval process for siting gas or liquid transmission pipelines. The bill also was intended to reduce duplication between state and local pipeline permitting processes and to eliminate the need for companies to obtain local conditional use permits for pipelines. In addition, the 2017 legislation clarifies a process whereby the PSC must coordinate with local governments to ensure local priorities are considered throughout the process. The bill provided:

- The PSC must require an applicant for certificate of site compatibility or a route permit to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules.
- When an application for a certificate for a transmission facility is filed, the PSC is required to notify the townships with retained zoning authority and cities and counties in which any part of the proposed corridor is located. The PSC may not schedule a public hearing sooner than 45 days from the date notification is sent by mail or email. Upon notification, a political subdivision must provide a listing to the PSC of all local land use, zoning, or building requirements. The requirements must be filed at least 10 days before the hearing or the requirements are superseded and preempted.
- An applicant must comply with all local requirements provided to the commission not otherwise superseded by the PSC.

The 2017 Legislative Assembly also passed House Bill No. 1144, relating to energy conversion and transmission facility siting. The bill split the North Dakota Energy Conversion and Transmission Facility Siting Act, codified as Chapter 49-22, into two chapters. The bill created Chapter 49-22.1 to address gas or liquid transmission facilities and gas or liquid energy conversion facilities, while amending Chapter 49-22 to pertain only to electric transmission and electric energy conversion facilities.

Zoning Provisions

Chapter 11-33, which provides for county zoning, contains provisions for creating, amending, repealing, and enforcing county zoning regulations. Cities have zoning authority within city limits under Chapter 40-47. Organized townships that have not relinquished zoning authority to the county have zoning authority within the township under Sections 58-03-11 through 58-03-15.

Section 11-33-01 provides counties may promote public health, safety, morals, public convenience, general prosperity, and public welfare by regulating the location and use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes through land use zoning. Section 11-33-03(3) provides standards for the regulation or restriction of construction, reconstruction, alteration, repair, or use of buildings and structures by the county.

Section 11-33-03 provides county zoning regulations are made to regulate and restrict buildings and structures and to conserve and develop natural resources among other things. In the 1997 North Dakota Supreme Court case, *Continental Resources, Inc. v. Farrar Oil Company*, the court concluded counties with home rule authority do not have authority to regulate any industry or activity which is regulated by state law or by rules adopted by a state agency. However, Sections 11-33-01 and 40-47-01 provide for county and city boards to establish institutional controls that address environmental concerns with the State Department of Health as provided in Section 23-20.3-03.1.

Section 40-47-01 provides the governing body of a city may regulate and restrict the height; number of stories; the size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Section 40-47-06 provides the governing body of a city must appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations to be enforced in the zoning districts.

Section 58-03-11 provides the board of township supervisors may establish one or more zoning districts and within the districts may regulate and restrict the erection; construction; reconstruction; alteration; repair; use of buildings and structures; the height, number of stories, and size of buildings and structures; the percentage of lot that may be occupied; the size of courts, yards, and other open spaces; the density of population; and the location and use of buildings, structures, land for trade, industry, residence, or other purposes. Section 58-03-12 provides the regulations and restrictions established in a township zoning district must be made in accordance with a comprehensive plan with reasonable consideration as to the character of the district; its peculiar suitability for particular uses; the normal growth of the municipality; the various types of occupations, industries, and land uses within the area; must be designed to facilitate traffic movement; encourage orderly growth and development of the municipality and adjacent areas; promote health, safety, and general welfare; and provide for emergency management.

Section 58-03-13 provides the board of township supervisors of a township must establish, by resolution, a township zoning commission to recommend the boundaries of the various township zoning districts and appropriate regulations and restrictions to be established in the districts.

Testimony and Committee Considerations

The committee received testimony from a representative of the PSC regarding the cooperation and communication between the PSC and political subdivisions, and the efficiency of the siting process. According to the testimony, as it relates to electric transmission lines, the authority of the PSC supersedes and preempts local land use if a zoning or building rule, regulation, or ordinance, as applied to the proposed route, is unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Regarding pipelines (gas or liquid transmission facilities), a PSC permit supersedes and preempts any local land use or zoning regulations. Before the facility is approved; however, the application must comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of the political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of the location or whether the political subdivision requirements are in direct conflict with state or federal laws or rules.

The testimony indicated, as of March 29, 2018, the PSC had received three pipeline siting applications since August 1, 2017, the effective date of Senate Bill No. 2286 (2017). The testimony noted the PSC has received one request to waive or reduce the 45-day waiting period from the date of notification to the date of public hearing. The testimony indicated the PSC is not aware of any impact on the relationships between landowners and the oil and gas industry, the public input process, or on compliance with, and enforcement of, political subdivision zoning ordinances.

The committee received testimony from a representative of North Dakota Petroleum Council regarding the relationship the oil and gas industry has with landowners throughout the state, and particularly the impact passage of Senate Bill No. 2286 (2017) has had on that relationship. According to the testimony, the 2017 legislation provides political subdivisions the opportunity to provide input to the PSC as the PSC considers permits for gas and liquid facilities. The testimony indicated the oil and gas industry considers the PSC to be best suited to administer the siting of gas and liquid transmission facilities, with input from interested parties, including political subdivisions. It was noted a better assessment of the siting process can be made once there are siting permits issued which have undergone the full process.

The testimony noted several companies have formed a consortium in response to one of Governor Burgum's "Energizing North Dakota" energy policy priorities of eliminating pipeline leaks. The consortium intends to submit a proposal to the oil and gas research program to fund a multiyear pipeline research and development program. This multimillion dollar program would focus on multiple demonstrations of new technologies that hold the potential to help industry avoid pipeline leaks or provide for early detection of leaks from liquids gathering pipelines. According to the testimony, results of this project have the potential to work toward eliminating pipeline leaks.

The committee received testimony from a representative of the Northwest Landowners Association which expressed concern about the limited timeline for local authorities to file local land use, zoning, or building requirements in advance of a hearing. The testimony proposed copies of zoning regulations, local ordinances, and county comprehensive plans be readily available upon request. It was suggested this would streamline the process and negate the possibility a notice is misplaced or misfiled to the prejudice of all the residents of a locale and ensure the community's regulations are considered and applied. The testimony indicated if the application of local ordinances becomes a matter for the PSC to decide, no incentive exists for a developer to engage with the local community and work with the local officials to find a solution which works for the subdivision, as well as the developer.

The committee discussed the possibility of the siting process bypassing the township and county levels, and going directly to the PSC. The committee recognized companies may spend 6 months to 1 year researching local zoning provisions and receiving county and township input before submitting an application to the PSC.

The committee also received testimony regarding energy conversion facilities and correction of the codification issues caused by the conflict between House Bill No. 1144 and Senate Bill No. 2286. The testimony indicated the two bills addressed the same section of Century Code. When two bills cannot be harmonized, typically the bill passed last will prevail over other conflicting bills. Senate Bill No. 2286 expanded the guidelines governing gas or liquid transmission facility siting, required a gas or liquid transmission facility to be in compliance with the road use agreements of the impacted political subdivision before receiving a certificate of site compatibility or a route permit from the PSC, and provided any local regulations not filed at least 10 days before the hearing are deemed superseded and preempted. House Bill No. 1144 separated the siting requirements for electric energy facilities and the gas or liquid facilities into two chapters in Title 49 of the Century Code. The testimony indicated some of the new items addressing gas or liquid transmission facilities were addressed in Section 49-22-16 when those items should have been incorporated in the newly created Chapter 49-22.1, which governs gas or liquid facility siting. As a result, there are two sections in Century Code, in two chapters, which give different processes and rules for the same area of law.

The committee considered a bill to correct the codification issues caused by the conflict between House Bill No. 1144 and Senate Bill No. 2286.

Recommendation

The committee recommends Senate Bill No. 2038 relating to energy conversion facilities to correct the codification issues caused by the conflict between House Bill No. 1144 and Senate Bill No. 2286.

REPORT

Energy and Environmental Research Center

The committee accepted the report of the EERC regarding the results and recommendations of the pipeline leak detection study. According to the report, the EERC concluded a three-phase study of liquids gathering pipelines. Phases I and II of the study informed the state on the status of the liquids gathering pipelines industry in North Dakota and demonstrated different approaches to leak detection, respectively. Phase III of the study, the focus of the report, focused on emerging technologies to prevent and detect leaks from these pipelines and risk assessment methods that can be applied to prioritize these pipelines for additional preventative actions. The report indicated the ultimate goal of the three-phase pipeline study is to reduce the frequency and total volume of leaks and spills from liquids gathering pipeline systems in the state. The results of this study phase inform stakeholders on possible approaches to risk assessment, which may facilitate appropriate layering of risk abatement approaches, including employment of technology.

The report indicated a variety of new technologies are emerging to address the needs of liquids gathering pipelines. These technologies have emerged since the 2015 EERC report on liquids gathering pipelines as a response to the developing market and a heightened interest in improving the operations and safety of liquids gathering pipelines. Many of these emerging technologies are not ready for easy commercial application, but are close to maturing. It is anticipated with willing pipeline operators as demonstration partners, some of these technologies can be matured to directly contribute positively to the safe operation of liquids gathering pipelines. New technology can be applied to improve performance, but new technology does not necessarily mean fewer pipeline leaks. Addition of technology often leads to more hardware and software. These additions can contribute to new failure pathways and increased risk, especially when technology lacks sufficient proof of performance in a representative environment.

According to the report, the EERC encourages the investigation and testing of new approaches to improve pipeline performance. Additionally, stakeholders should proceed deliberately to ensure adequate testing and demonstration is achieved before implementation is widely deployed. Technology also has potential to add failure pathways with little performance benefit, if the technology is not appropriately applied. Pipeline operators should seek to employ technology through which gains can be realized. To do so often requires development work to specifically tune these technologies for liquids gathering pipelines.

The report indicated the ultimate goal of risk assessment and risk management is to identify and prioritize actions to assure pipeline safety and integrity. Available standards recommend operators be provided great latitude performing risk assessment to ensure the purpose and approach match the needs and resources of the situation. Principles of continuous improvement are woven into every approach to risk assessment. The reliability, usefulness, and resources demanded for each approach to risk assessment vary greatly. More complex quantitative methods provide greater potential for insight, but they also require significant additional resources to complete and, therefore, are not globally applicable.

TAXATION COMMITTEE

The Taxation Committee was assigned five studies for the 2017-18 interim:

- The Legislative Management directed a study of economic development tax incentives pursuant to North Dakota Century Code Section 54-35-26.
- Section 18 of Senate Bill No. 2206 (2017) directed a study of the property tax system, with emphasis on the feasibility and desirability of providing property tax reform and relief. The study required consideration of all property classifications and taxing districts, evaluation of historical fluctuations in property values, the transparency of the property tax system, the processes and procedures available to taxpayers to contest valuations and assessments, the manner in which property tax information is provided to taxpayers, the process for determining taxing district budgets, and taxpayer participation and input in the property tax system.
- Section 7 of Senate Bill No. 2166 (2017) directed a study of the duplicative application of property tax incentives. The study required consideration of the benefits received by properties located in both a tax increment financing (TIF) district and a renaissance zone, the duration for which a single property may benefit from the use of multiple property tax incentives, and the impacts of property tax incentives on the remainder of the property tax base that is not receiving incentives.
- Section 6 of Senate Bill No. 2166 (2017) directed a study of the manner in which city growth and infill development affects property taxes and an evaluation of the return on investment for state and community projects. The study required an examination of various policies affecting city development patterns, including the impact of transfer payments between state and local governments; the cost of government services and infrastructure, including future liability; the amount of tax revenue generated per increment of assumed liability for downtown areas; and whether certain areas of a city generate more revenue than expenses while other areas generate more expenses than revenue.
- Section 1 of Senate Bill No. 2230 (2017) directed a study of the feasibility and desirability of providing an income tax credit to individuals for premiums paid for hybrid long-term care partnership plan insurance coverage and the feasibility and desirability of incentivizing asset protection that may be equal to the amount paid out by the hybrid long-term care partnership plan.

The Legislative Management directed the committee to receive five reports:

- A 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, pursuant to Section 54-60.1-07.
- An annual report from the Department of Commerce's Division of Community Services on renaissance zone progress, pursuant to Section 40-63-03(2).
- An annual report from the Department of Commerce compiling reports from cities that have renaissance zone property included in a TIF district, pursuant to Section 40-63-03(10).
- Reports from the Tax Commissioner from compiled reports from counties and school districts receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended, pursuant to Section 57-51-15.
- A report from the Department of Human Services on the status of the state-paid economic assistance and social service pilot program and the development of a plan for permanent implementation, pursuant to Section 50-34-01.

Committee members were Senators Jessica Unruh (Chairman), Brad Bekkedahl, Dwight Cook, Jim Dotzenrod, Lonnie J. Laffen, and Scott Meyer and Representatives Thomas Beadle, Jason Dockter, Sebastian Ertelt, Jim Grueneich, Ron Guggisberg, Patrick Hatlestad, Craig Headland, Jim Kasper, Ben Koppelman, Alisa Mitskog, Emily O'Brien, Randy A. Schobinger, Vicky Steiner, and Nathan Toman.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Background

Section 54-35-26, enacted through the passage of Senate Bill No. 2057 (2015), provides for the review of a specified list of economic development tax incentives and requires each incentive be reviewed at least once every 6 years. The Legislative Management selected the interim Taxation Committee to review tax incentives during the 2017-18 interim.

The practice of legislatively mandating the periodic review of economic development tax incentives began to gain popularity following the 2007-09 recession. As states continued to look at austerity options and ways to grow economies, reviewing tax incentives was viewed as sound public policy to ensure state dollars were being spent in a prudent and effective manner. States leading the way in implementing tax incentive review practices included Washington, Oregon, and Iowa.

In 2012 The Pew Charitable Trusts (Pew) began tracking the progress states were making in evaluating tax incentives and published a report entitled *Evidence Counts: Evaluating State Tax Incentives for Jobs and Growth*. The report identified those states leading the way in evaluating the effectiveness of tax incentives, states meeting some of the criteria for effective evaluations, and states not meeting any criteria in terms of the scope or quantity of evaluations. Pew's 2017 report, entitled *How States Are Improving Tax Incentives for Jobs and Growth: A National Assessment of Evaluation Practices*, identifies 10 states leading the way in evaluating incentives, 18 states making progress, and 23 states trailing behind. The report describes the leading states as having well-designed plans for regular reviews, experience in producing quality evaluations that measure economic impacts, and a process for applying the results of evaluations to inform policy decisions. North Dakota is identified as a state making progress in evaluating incentives.

Tax Incentive Evaluation Law

Section 54-35-26 directs a review of economic development tax incentives by an interim committee selected by the Legislative Management. The review entails an assessment of whether a specified list of 20 economic development tax incentives are serving the purposes for which the incentives were enacted in a cost-effective and equitable manner. The statute requires each incentive be reviewed at least once every 6 years and lists the following eight items a committee may consider when evaluating incentives:

1. The extent of achievement of the goals of the incentive and whether unintended consequences have developed in its application;
2. Whether the design and application of the incentive can be improved;
3. The extent of complementary or duplicative effect of other incentives or governmental programs;
4. Whether the incentive has a positive influence on business behavior or rewards business behavior that is likely to have occurred without the incentive;
5. The effect of the incentive on the state economy, including the extent of primary sector operation of the recipient and any competitive disadvantage imposed or benefit conferred on other state businesses, any benefit or burden created for local government, and the extent of the incentive's benefit that flows to out-of-state concerns;
6. The employment opportunities generated by the incentive and the extent those represent career opportunities;
7. Whether the incentive is the most effective use of state resources to achieve desired goals; and
8. If the committee's analysis of the incentive is constrained by lack of data, whether statutory or administrative changes should be made to improve collection and availability of data.

Interim Committee Review of Incentives

The first round of incentive evaluations was conducted by the Political Subdivision Taxation Committee during the 2015-16 interim. The committee selected the 14 incentives to review from the incentives listed in Section 54-35-26 and an additional four incentives not listed in Section 54-35-26. Legislation resulting from the committee's review led to a uniform definition of "primary sector business," statutory changes to the angel fund credit, and the elimination of the wage and salary income tax credit, the microbusiness income tax credit, and the certified nonprofit development corporation income tax credit. The committee's review also led to Senate Bill No. 2044 (2017), which resulted in the Bank of North Dakota's acquisition of dynamic revenue analysis software from Regional Economic Models Incorporated (REMI) and the 2017-18 interim committee's ability to request incentive evaluations generated using the software for incentives selected for review during the 2017-18 interim.

This committee was selected to conduct the second round of incentive evaluations during the interim, and selected seven incentives to review from the list provided in Section 54-35-26. The committee selected the new jobs credit from income tax withholding, the internship program credit, the workforce recruitment credit, the research expense tax credit, new or expanding business exemptions, renaissance zone tax credits and exemptions, and development or renewal area incentives including TIF incentives. Development or renewal area incentives were added to the list of incentives in Section 54-35-26 by Senate Bill No. 2166 (2017). The interim committee selected by the Legislative Management during the 2019-20 interim is required to complete a review of the remaining incentives listed in Section 54-35-26 before the end of the first 6-year review cycle.

The committee received background information for each of the selected incentives which provided an explanation of the incentive, the perceived intent of the Legislative Assembly in creating or altering each incentive, and the data and testimony required to effectively review each incentive. The committee received information from representatives of the Tax Department and the Department of Commerce regarding the number of claimants and amounts claimed for each incentive and information regarding any complimentary or duplicative incentives to those selected for review. The Bank of North Dakota provided a dynamic revenue analysis for the new jobs credit from income tax withholding, the research expense tax credit, new or expanding business exemptions, and renaissance zone tax credits and exemptions. The committee also solicited testimony from interested parties regarding the use of the incentives selected for study.

New Jobs Credit from Income Tax Withholding

Explanation of the Credit

Chapter 52-02.1 allows an employer engaged in a primary sector business to enter an agreement with Job Service North Dakota for the establishment of training and education programs directed at new jobs within the employer's business. The agreement must specify the date the program will commence, identify program costs, and provide a guarantee by the employer for payment of program costs and an assurance that any deferral of payment will not exceed 10 years from the date the program commences. The agreement also must provide an assurance that every employee participating in the program will be paid at least $10 per hour, plus benefits, by the end of the 1st year of employment and for the life of the loan; list the maximum amount of the credit from withholding or tuition and fee payments allowed for the project; and specify on-the-job training costs for employees may not exceed 50 percent of the annual gross wages and salaries for the new jobs in the 1st full year following the date the project commences. If program costs require financing, the loan or grant must be secured and payable from a sufficient portion of future receipts of payments authorized by the agreement. Job Service North Dakota may not enter an agreement until an employer requiring financing has sufficiently qualified for financing.

Once the agreement is executed, Job Service North Dakota notifies the Tax Commissioner who is required to credit the income tax withholding on wages paid by the employer to each new employee participating in the program. An amount equivalent to the credited amount must be transmitted to the State Treasurer for allocation to a special fund from which payments are made to the lender that provided the program loan or to the employer if the program costs were self-funded. When the program costs have been satisfied, the employer's credits must cease. A new employee participating in a program receives full credit for the amount withheld while the cost of the program is being reimbursed.

Perceived Goals in Creating or Altering the Credit

Provisions of the new jobs credit from income tax withholding were enacted through the passage of House Bill No. 1518 (1993). The perceived goal of the Legislative Assembly in creating the credit was to encourage community economic development by incentivizing businesses to locate to or expand within North Dakota by providing government-assisted new jobs training. The credit was viewed as a way to reward employers for training workers for new, skilled, and higher paying jobs and as a way for North Dakota to compete with other states for new businesses. The credit was amended in 1999 to add a reimbursement option for employers that self-financed training costs, and in 2017 to add a uniform definition of "primary sector business" to include a definition of "new wealth."

Testimony and Committee Considerations

The committee received information from a representative of the Tax Department indicating $1,470,239 in withholding collections was allocated to the new jobs credit program in fiscal year 2016 and $1,574,425 was allocated in fiscal year 2017. The committee received an evaluation of the credit from a representative of the Bank of North Dakota, using REMI software, which indicated the incentive created almost 16,000 full-time jobs from 1999 through 2013 and 630 new jobs from 2014 to 2015. Wages for new employees grew an average of 87 percent over 10 years and the incentive increased the state's population by 26,000. The evaluation noted the incentive's use over a 20-year period beginning in 1996 and ending in 2016 cost the state $7.6 billion in direct and indirect costs but generated $8.6 billion in revenues. State expenditures related to the program primarily relate to the costs needed to maintain an increased population.

The committee received testimony in favor of retaining the credit from representatives of the Economic Development Association of North Dakota. According to the testimony, 350 companies have used the new jobs credit program since 2005. Nearly 100 agreements are in place under the new jobs credit program and 4,332 of the 5,800 new jobs created as a result of these agreements have been filled. The committee did not receive any testimony in opposition to retaining the credit.

Conclusions

The committee makes no recommendation regarding the new jobs credit from income tax withholding.

Internship Program Credit

Explanation of the Credit

Section 57-38-01.24 provides for an internship program income tax credit. The credit is available to income taxpayers that are employers in this state and have a qualifying internship program. A qualifying internship program must be located in this state and requires the taxpayer to supervise and evaluate an intern enrolled in an institution of higher education or in a vocational technical education program in North Dakota and who is seeking a degree or certification in a field closely related to the work being undertaken during the internship. The internship also must provide academic credit or count toward the completion of a vocational technical education program being pursued by the intern. The amount of the credit is equal to 10 percent of the stipend or salary paid to an intern employed by the taxpayer. A taxpayer may claim no more than $3,000 in credits over any combination of taxable years and may claim a credit for up to five interns employed at the same time. A passthrough entity entitled to the credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level and passed through to the entity's partners, shareholders, or members in proportion to their respective ownership interests in the passthrough entity.

Perceived Goals in Creating or Altering the Credit

The internship program credit was enacted with the passage of House Bill No. 1018 (2007). The perceived goal of the Legislative Assembly in creating the credit was to encourage businesses to establish internship programs that potentially could lead to the retention of more North Dakota college graduates in the North Dakota workforce. The only changes made to the credit following its enactment were technical in nature and related to the elimination of the optional long form filing method, in 2009, and the streamlining of the description of a passthrough entity, in 2013.

Testimony and Committee Considerations

The committee received information from a representative of the Tax Department indicating less than $50,000 in internship program credits were claimed from 2011 to 2016, excluding years in which there were fewer than five claimants. The committee also received information regarding the department's efforts to publicize the availability of the credit, which included mailing information pamphlets to local economic developers. The committee considered a bill draft that would have repealed the internship program credit in hopes of eliciting testimony from parties that wished to retain the credit. Representatives from the Economic Development Association of North Dakota testified in support of eliminating the credit. The committee did not request an evaluation of the credit using REMI software due to the minimal use of the credit.

The committee received information from a representative of the Department of Commerce regarding other state-administered programs that may have complimentary or duplicative effects to the internship program credit. The committee received information regarding the operation intern program, which is a state-funded program that provides up to $3,000 in matching funds per student, per term, to meet various costs including reimbursing salaries and wages. The Legislative Assembly awarded $1.5 million in funding to the program for the 2013-15 biennium and $950,000 in funding for the 2017-19 biennium, and the program has matched over 2,200 interns with over 600 businesses since its inception. The committee also received information regarding internship and apprenticeship requirements and opportunities at the university level and learned various programs are offered in conjunction with the community of Grand Forks, economic development corporations, and the Energy and Environmental Research Center.

Conclusions

The committee did not recommend the elimination of the internship program credit. The committee acknowledged while the credit has not been used widely in the past, it may be used in the future considering the state's increasing workforce needs.

Workforce Recruitment Credit

Explanation of the Credit

Section 57-38-01.25 provides for a workforce recruitment credit. The income tax credit is available to income taxpayers that are employers in this state and have incurred costs to recruit and hire employees for hard-to-fill employment positions in North Dakota. The credit is equal to 5 percent of the first 12 months of salary paid by the employer to an employee hired to fill a hard-to-fill position for which the annual salary meets or exceeds the state average wage. For purposes of the workforce recruitment credit, the state average wage is equal to 125 percent of the state average wage amount published by Job Service North Dakota at the time the employee is hired.

The credit may be claimed in the tax year following the employee's completion of the first 12 consecutive months of employment. The amount of credit exceeding a taxpayer's liability may be carried forward to each of the 4 succeeding taxable years. A "hard-to-fill employment position" is defined as a position that requires an employer to use extraordinary recruitment methods and a position an employer has been unsuccessful in filling for 6 consecutive months. An employer must use a fee-based recruiter, advertise the position in a publication directed at a particular profession and on a fee-based employment website, and pay a signing bonus, moving expenses, or nontypical fringe benefits to meet the requirement of having used extraordinary recruitment methods.

Perceived Goals in Creating or Altering the Credit

The workforce recruitment credit was created with the passage of House Bill No. 1018 (2007). The perceived goal of the Legislative Assembly in creating the credit was to address the shortage of workers in North Dakota and incentivize employers in this state to use extraordinary recruitment methods to fill high-paying, hard-to-fill positions. The credit was seen as a tool to help stimulate an influx of workers into the state and promote increased business and economic development. The only changes made to the credit following its enactment were technical in nature and related to the elimination of the optional long form filing method, in 2009, and the streamlining of the description of a passthrough entity, in 2013.

Testimony and Committee Considerations

The committee received information from a representative of the Tax Department indicating less than $13,000 in workforce recruitment credits were claimed from 2007 to 2016, excluding years in which there were fewer than five claimants. The committee also received information regarding the department's efforts to publicize the availability of the credit, which included mailing information pamphlets to local economic developers. The committee did not request an evaluation of the credit using REMI software due to the minimal use of the credit. The committee considered a bill draft that would have repealed the workforce recruitment credit in hopes of eliciting testimony from parties that wished to retain the credit. Representatives from the Economic Development Association of North Dakota testified in support of eliminating the credit.

Conclusions

The committee did not recommend the elimination of the workforce recruitment credit. The committee acknowledged while the credit has not been used widely in the past, it may be used in the future considering the state's increasing workforce needs.

Alternative Approaches to Addressing the State's Workforce Needs

The review of the internship program credit and the workforce recruitment credit prompted discussion of the state's broader workforce needs. The committee sought testimony from agencies with expertise in areas concerning workforce and economic development, including the Department of Labor and Human Rights and the Economic Development Association of North Dakota, regarding recommendations for a more effective approach to addressing the state's workforce needs in light of the low volume of taxpayers using the existing credit programs.

The committee received testimony from a representative of the Department of Labor and Human Rights regarding the Workforce Development Council's efforts to address the state's workforce needs. According to the testimony, the state has a 2.9 percent unemployment rate, compared to a 3.9 percent rate nationally, and has over 14,000 unfilled jobs. The testimony indicated the Workforce Development Council has been working to collect data, evidence, and stakeholder input to help understand the state's current and future workforce needs. The Workforce Development Council indicated it would provide recommendations before the 2019 legislative session.

The committee received testimony from representatives of the Economic Development Association of North Dakota regarding the association's recommendations for a more effective approach to addressing the state's workforce needs. The association recommended a talent attraction and retention scholarship program and a 21st century manufacturing automation tax credit. The committee considered a bill draft containing both incentives, which was later revised to split the two incentives into separate bill drafts. The committee reviewed two versions of the scholarship incentive.

The committee considered a bill draft that would have created a North Dakota talent attraction and retention scholarship program, administered by the Bank of North Dakota in conjunction with the North Dakota University System. The scholarship would have been offered in the form of a forgivable loan and would have required an individual receiving the scholarship to work in the state for 3 years following graduation. An individual would have been able to qualify for up to $8,500 per year for 2 years and the program would have required a dollar-for-dollar, public-private match.

The committee considered an alternative version of the bill which provides a skilled workforce scholarship program that more closely mirrors South Dakota's Build Dakota Scholarship Program. The skilled workforce scholarship program created by the bill would be administered by the Bank of North Dakota in conjunction with the University System and the Workforce Education Advisory Council for the purpose of attracting and retaining students in high-demand workforce areas. The bill requires the University System and the Workforce Education Advisory Council to publish a list of qualifying programs by August 1 of each year. The program, which would be funded with up to $10 million from the Bank of North Dakota, requires a dollar-for-dollar private match. Scholarships would be provided for designated educational programs that can be completed within 2 years. Scholarship funds would be paid directly to the institution administering the educational program and cover tuition, fees, books, and supplies required to complete the program. The bill would require a scholarship recipient to maintain a 2.5 grade point average and remain and work in the state for 3 years following the receipt of the recipient's degree or certificate. An individual who fails to meet these requirements would be subject to the repayment provisions specified in the individual's scholarship award agreement.

Committee members expressed concerns regarding offering a scholarship program that does not have need-based requirements and apprehension the program would become an entitlement over time. The committee acknowledged the state's workforce needs but questioned whether there is an alternative way to encourage students to pursue high-demand trades without paying a student's costs upfront. Other committee members noted loan forgiveness programs are less effective at enticing students than grant programs that pay a student's costs upfront. Committee members raised concerns regarding incentives offered by surrounding states to encourage students to pursue high-need degree fields and noted this state needs to remain competitive or risk losing North Dakota graduates to educational institutions in other states.

Committee members reviewed a bill to create a 21st century manufacturing workforce incentive. The bill provides a slight rework of the income tax credit that expired in 2017 for automating a manufacturing process. The bill provides an income tax credit equal to 20 percent of the amount expended to purchase manufacturing machinery and equipment to automate a manufacturing process to improve productivity or increase job quality. The credit contains reporting requirements and credit clawback provisions that allow the Tax Department to recoup the credits awarded if a claimant fails to meet required increased productivity or job quality thresholds. The credit amount that may be awarded among all claimants would be limited to $2 million per year. The committee was informed manufacturers had emphasized the importance of the credit in light of the state's inadequate workforce.

Recommendations

The committee recommends Senate Bill No. 2039 to create a skilled workforce scholarship program.

The committee recommends House Bill No. 1040 to create a 21st century manufacturing workforce incentive.

Research Expense Tax Credit

Explanation of the Credit

Section 57-38-30.5 provides for a research expense tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for expenditures related to conducting qualified research in this state. The amount of the credit is equal to a percentage of qualified research expenses which exceed a defined base amount. The definitions of "qualified research expenses" and "base amount," for purposes of Section 57-38-30.5, have the same meaning as provided in Section 41 of the Internal Revenue Code [26 U.S.C. 41]; however, any expenses incurred for research conducted outside North Dakota are excluded. The credit is equal to 25 percent of the first $100,000 in qualified expenses which exceeds the base amount and a varying percentage of any amounts exceeding the first $100,000. The percentage credit allowed on amounts exceeding the first $100,000 in excess qualified expenses varies based on the year in which a taxpayer first began conducting qualified research in this state.

For qualified research in North Dakota which began before 2007, the percentage credit allowed on amounts exceeding the first $100,000 in excess qualified expenses is 7.5 percent for tax year 2007, 11 percent for tax year 2008, 14.5 percent for tax year 2009, 18 percent for tax years 2010 through 2016, and 8 percent for tax year 2017 and any subsequent tax years. A taxpayer qualifying for the credit under these conditions is limited to claiming no more than $2 million in credits in any taxable year and may not apply the amount of any unused credits in any other taxable year.

For qualified research in North Dakota which began on or after January 1, 2007, and before January 1, 2011, the percentage credit allowed on amounts exceeding the first $100,000 in excess qualified expenses is equal to 20 percent for taxable years 2007 through 2016. For qualified research in North Dakota which began on or after January 1, 2011, the percentage credit allowed on amounts exceeding the first $100,000 in excess qualified expenses is 8 percent. The percentage of allowable credit on amounts exceeding the first $100,000 in excess qualified expenses also is 8 percent for any credits claimed in taxable years after 2016, regardless of when the taxpayer first began conducting qualified research in this state.

For a taxpayer that began conducting qualified research in this state on or after January 1, 2007, any credit amount exceeding a taxpayer's liability may be carried back to each of the 3 preceding taxable years or carried forward to each of the 15 succeeding taxable years. A taxpayer certified by the Department of Commerce as a primary sector business, with annual gross revenues of less than $750,000, which did not conduct qualifying research in this state until after December 31, 2006, may elect to sell, transfer, or assign up to $100,000 of unused credits to another taxpayer. The transferee must claim the credit in the year in which the purchase agreement is executed and may carry forward any unused credits to each of the 15 succeeding taxable years. The transferee may not carry unused credits back to prior tax years nor may the transferee sell, assign, or transfer the credit. The transferor must assign any gross proceeds received as a result of the credit transfer to North Dakota for purposes of taxation.

Perceived Goals in Creating or Altering the Credit

Section 57-38-30.5, which provides for a research expense tax credit, was created by the passage of House Bill No. 1645 (1987). As enacted, Section 57-38-30.5 provided for a corporate income tax credit equal to 8 percent of the

first $1.5 million of North Dakota qualified research expenses in excess of base period research expenses, and 4 percent of any amount exceeding $1.5 million in excess research expenses. The 1987 legislation was patterned after a Minnesota law that had proved to be very successful for that state. The perceived goal of the Legislative Assembly in creating this credit was to encourage new and existing North Dakota corporations to undertake research and development. The credit was seen as a tool to help stimulate economic development. The credit was expanded to limited liability companies in 1993 and to passthrough entities and individuals in 2007. Legislation passed in 2007 also broadened the scope of the credit by allowing a taxpayer to sell, transfer, or assign up to $100,000 in unused credits. The goal of expanding the credit in 2007 was to attract new businesses to this state to conduct research activity and retain those businesses already present. Additional technical corrections pertaining to definitions and filing methods were made in 2009 and safeguards were added in 2013 to prevent references to federal definitions from becoming ineffective should the federal research tax credit be discontinued. The most recent change to the credit was made in 2017 to create a uniform definition for "primary sector business."

Testimony and Committee Considerations

The committee received information from a representative of the Tax Department regarding the number of claimants and the amounts claimed on individual and corporate income tax returns from 2007 to 2016. According to the testimony, approximately 1,800 taxpayers claimed the credit from 2007 to 2016. Individuals claimed over $4.5 million and corporations claimed over $500,000 for the research expense tax credit in the 2016 tax year. The committee received an evaluation of the credit from a representative of the Bank of North Dakota, using REMI software which indicated the credit added 1,100 jobs and 1,000 individuals to the state's population at its peak and which resulted in a medium-term positive economic and demographic impact for the state. It was noted jobs associated with the credit are concentrated mainly in the professional services industry and do not result in local displacement because research and development activities generally do not take business or money away from existing employers. The credit's impact on the state's gross domestic product is about $80 million per year and the state will receive about $213 million in revenue as a result of the credit over a 20-year period. The state will expend $66 million for the direct cost of the credit and $182 million in indirect costs as a result of maintaining an increased state population over the same 20-year period. The net result is the state having $30 million less than it would have had if the credit had not been provided. It was noted the credit is a net liability in terms of the state's budget but has a positive impact on the state's economy.

The committee received testimony in favor of retaining the credit from a representative of Basin Electric Power Cooperative. The testimony indicated the cooperative averaged 529 employees allocating work time to research and development activities from 2014 through 2016. The main research and development activities undertaken by the cooperative include the development of new methods and processes to comply with environmental regulations, new products, and safer ways to produce existing products. The cooperative has accumulated $10.3 million in credits, has carried forward $8.7 million in unused credits, and has had $1.6 million in credits expire. The cooperative was not able to use all the earned credits because the cooperative is a capital-intensive company with large depreciation deductions resulting in net operating losses. The testimony explained how the credit operates in other states and the committee received suggested ways North Dakota's credit could be enhanced. Suggested enhancements included allowing the credit to be applied against withholding or other taxes, increasing the carryforward period for unused credits, allowing a portion of the credits to be refunded, and improving the disclosure of information related to the credit. The committee did not receive testimony in opposition to retaining the credit.

Conclusions

The committee makes no recommendation regarding the research expense tax credit.

New or Expanding Business Exemptions

Explanation of the Exemptions

The primary economic development tool in Chapter 40-57.1 authorizes cities or counties to grant the operator of a new or expanding business a partial or complete property tax exemption or the option to make payments in lieu of taxes. Property tax exemption also may be granted for property owned by a local development organization for the purposes of attracting new industry to the state. For purposes of the exemption, a "project" must be a revenue-producing new or expanding primary sector business. A project also may include projects in the retail sector in cities or counties with a population of less than 40,000 if the voters have provided the governing body authority to grant retail exemptions and the governing body has established criteria for granting those exemptions.

Under Chapter 40-57.1, if a project has local competitors, the project operator is required to notify competitors of the project owner's pending application for an exemption in the official newspaper of the city or county. Additional hearing and notice requirements must be met if the Department of Commerce determines the total cost of the project is estimated to exceed $1 billion. Impacted school districts and townships are included in any exemption or payment in lieu of tax negotiations and deliberations and notice must be sent to affected counties and school districts if a city anticipates a property will receive an incentive for more than 5 years. The affected county or school district may elect to disallow the incentive from applying to its portion of the property tax for incentives granted after July 31, 2017.

A city or county may grant a partial or complete property tax exemption for up to 5 years and may extend the exemption for up to 5 additional years if the project produces or manufactures a product from agricultural commodities produced in this state or the project is situated on property leased from a government entity. The option to make payments in lieu of taxes may be extended to a project operator through the 20th year following the date the project commenced. The governing body of a city or county may revoke or reduce a property tax exemption or revoke or increase a project operator's payments in lieu of taxes if the governing body finds the project operator provided inaccurate or untrue information, used the property for purposes other than anticipated, improved the property to a greater extent than what was anticipated, or if ownership of the property changed since the incentive was approved.

A project owner also may receive an income tax exemption for up to 5 years from the date the project commenced pursuant to Section 40-57.1-04. The income tax exemption is equal to the amount of net income realized by the project, or in the case of an expansion, the net income generated by the expanded portion of the business. A project owner shall submit an application for the income tax exemption to the State Board of Equalization within 1 year of commencing project operations and provide notice of the potential exemption to competitors as directed by the State Board of Equalization. For purposes of the income tax exemption, a "project" is defined as any new or expanding revenue-producing tourism or primary sector business. The Department of Commerce reviews applications to verify a project's eligibility as a primary sector or tourism business. The exemption is granted if the State Board of Equalization finds it is in the best interest of the people of North Dakota. A project is not eligible for a property or income tax exemption under Chapter 40-57.1 if it has an outstanding lien for unpaid state or local taxes, if granting the exemption would endanger existing businesses or foster unfair competition, or if the business is receiving a property tax exemption under TIF. A project operator is required to provide state and property tax clearance records for exemptions granted after July 31, 2017.

Perceived Goals in Creating or Altering the Exemptions

Provisions of new or expanding business property and income tax exemptions were enacted in 1969 by the passage of Senate Bill No. 39 and the creation of Chapter 40-57.1. As enacted, Chapter 40-57.1 only applied to new businesses and required a project operator to receive a property tax exemption as a condition to qualifying for an income tax exemption. A city or county also was required to apply to the State Board of Equalization for the income tax exemption on behalf of the project operator. The intent of the Legislative Assembly in creating the new business income and property tax exemption was stated clearly in the bill. Section 1 of the bill provided, in pertinent part, the purpose of the newly created chapter was:

> [T]o sanction, authorize, and encourage activities in the public interest and for the welfare of the state of North Dakota, its subdivisions and people by assisting in the establishment of industrial plants and promotion of economic activities within the state, and thereby increasing production of wealth, and adding to the volume of employment, particularly during those seasons when employment in farming and ranching is slack, thus alleviating unemployment among the people of the state.

Chapter 40-57.1 was amended in the 1970s to add notice requirements for local competitors; in the 1980s to extend the property tax exemption to revenue-producing entities and property owned by a local development corporation and restrict the property tax exemption from applying to certain large industrial projects, and in the 1990s to allow the property tax exemption to apply to the expansion and retention of existing buildings and the income tax exemption to apply to primary sector businesses and tourism businesses. Requirements also were added in the 1990s mandating a project owner to verify the owner's state and local tax liens have been satisfied as a condition to receiving the income tax exemption. Legislation enacted since 2001 allowed small cities and counties to grant the exemption to retail businesses, required enhanced notice for competitors for projects estimated to exceed $1 billion, and required cities that anticipated granting a property tax incentive for more than 5 years to notify impacted counties and school districts and allow those taxing districts to prohibit the incentive from applying to their portion of the property tax.

Testimony and Committee Considerations

The committee received information from a representative of the Tax Department regarding the number of individual and corporate income tax returns on which the income tax exemption was claimed and the estimated reduction in tax from tax years 2006 through 2016. The committee received an evaluation of the income tax exemption from a representative of the Bank of North Dakota, using REMI software, which indicated 48 new or expanding business projects received the exemption between 2006 and 2017. The use of the incentive closely correlated with the state's economy--increasing or decreasing as the state's economy expanded or contracted. The incentive was used heavily by the manufacturing sector. The number of jobs created as a result of the incentive peaked in 2014 with the creation of 1,400 jobs. The incentive generated $1.03 for every dollar invested when subtracting the cost of providing the income tax incentive, and the cost of other state expenditures related to the incentive, from the revenues generated by the incentive. According to the testimony, the incentive is working as intended. Representatives of the Economic Development Association of North Dakota and the City of Fargo provided testimony in support of retaining the exemptions. The committee did not receive testimony from parties opposed to new or expanding business exemptions.

State Grantor Reports

The committee was assigned the responsibility to receive a 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, pursuant to Section 54-60.1-07. According to the report, the business incentive accountability law became effective January 1, 2006, and two of the incentives the committee is reviewing, the renaissance zone and new or expanding business incentives, are subject to the law. The law applies to businesses that receive incentives totaling $25,000 or more in a given year from state or local grantors. The law requires the recipient business to enter a business incentive agreement with the grantor, which must provide a description of the incentive to be granted as well as the job goals the business seeks to achieve within the first 2 years. A recipient business must report progress toward achieving stated goals. The report indicated 841 business incentive agreements were entered from 2013 to 2017 totaling an incentive value of $113,375,323. The report detailed the distribution of business incentives by type, public purpose, and type of business. The report also provided the number of agreements entered by year and identified whether the goal was to create jobs, retain jobs, or neither. According to the report, 2,534 jobs were created and retained over the last 5 years compared to a goal of 2,000 jobs.

Conclusions

The committee makes no recommendation regarding new or expanding business exemptions.

Renaissance Zone Tax Credits and Exemptions

Explanation of the Incentive

Chapter 40-63 provides for various renaissance zone tax exemptions and credits. Section 40-63-04 provides income tax exemptions to an individual who purchases or rehabilitates single-family residential property for the individual's primary residence as a zone project. The amount of the exemption is up to $10,000 of personal income tax liability for 5 taxable years beginning with the date rehabilitation is completed or the property is occupied. An exemption also is available for a taxpayer that purchases, leases, rehabilitates, or makes leasehold improvements to residential, public utility infrastructure, or commercial property for any business or investment purposes as a zone project. The amount of the exemption is equal to the income derived from the business or investment locations within the zone, up to a maximum amount of $500,000 per taxable year for 5 taxable years beginning with the date of purchase, lease, or completion of rehabilitation. For projects that expand an existing building in the zone, the amount of the exemption is equal to the income derived from the portion of the business relating to the expansion. In lieu of the previous exemption, a taxpayer in a city with a population of 2,500 or less may elect to exempt up to $2,000 of individual income tax liability if the cost of a new business purchase, leasehold improvement, or existing business expansion exceeds $75,000.

A property owner not participating in a renaissance zone project is eligible for a credit against income tax liability if the owner is required to make changes in utility services or in a building structure due to changes made to property part of a zone project. The amount of the credit is equal to the total amount of the investment necessary to complete the changes. Any credits exceeding a taxpayer's liability may be carried forward for up to 5 taxable years. A renaissance zone credit also is offered in Section 40-63-06 for investments in historic preservation or property renovation within a renaissance zone. The amount of the credit is equal to 25 percent of the amount invested, up to a maximum amount of $250,000. The credit must be claimed in the year the preservation or renovation work is completed. Any credits exceeding a taxpayer's liability may be carried forward for up to 5 taxable years.

Exemptions are available under Section 40-63-07 for renaissance fund organizations. A city with a designated renaissance zone may establish a renaissance fund organization to raise funds to finance zone projects. A taxpayer may receive a credit against income tax liability equal to 50 percent of the amount invested in a renaissance fund organization. The maximum amount of credits awarded to all taxpayers is limited to $10.5 million and any credit amount exceeding a taxpayer's liability may be carried forward for up to 5 taxable years.

Property tax incentives also are available within a renaissance zone. A city may grant a partial or complete property tax exemption for up to 5 taxable years after the purchase or completion of rehabilitation of renaissance zone property. A city may grant an exemption on single-family residential property, exclusive of land, if the property was purchased or rehabilitated by an individual for the individual's primary place of residence as a zone project. A city also may grant an exemption on buildings, structures, fixtures, and improvements purchased or rehabilitated as a zone project for a business or investment purpose. The State Board of Equalization may grant a partial or complete property tax exemption for up to 5 taxable years, following the date of rehabilitation, on public utility infrastructure rehabilitated as a zone project. A taxpayer may not be delinquent in the payment of any state or local tax liability to be eligible to claim a renaissance zone credit or exemption.

Perceived Goals in Creating or Altering the Incentive

In 1999, provisions relating to renaissance zones were enacted to allow a governing body of a city to apply to designate a portion of the city as a renaissance zone. Income and property tax exemptions were created for taxpayers investing in real property within a renaissance zone. A historic preservation and renovation tax credit also was created

for investment within a renaissance zone. The perceived goal of the Legislative Assembly in creating renaissance zone credits and exemptions was to provide incentives to encourage the rejuvenation of inner cities. Various changes were made to renaissance zone provisions in later years, including granting the ability to expand the boundaries of an existing renaissance zone or remove portions of a renaissance zone which were not progressing in 2001, authorizing a renaissance fund organization to provide financing to businesses outside a renaissance zone in 2003, authorizing the Department of Commerce to approve a city's request to extend the duration of a renaissance zone in 2009, modifying provisions related to investments in renaissance zone organizations in 2011, changing the manner in which income related to a business expansion is attributed in 2013, increasing the maximum allowable size of renaissance zones in 2015, and requiring letters of support from the governing bodies of each county and school district impacted by a proposed zone be submitted with a city's development plan in 2017.

Renaissance Zone and Tax Increment Financing Reports

The committee was assigned the responsibility to receive an annual report from the Department of Commerce, Division of Community Services, on renaissance zone progress, pursuant to Section 40-63-03(2), and a report compiling reports from cities that have renaissance zone property included in a TIF district, pursuant to Section 40-63-03(10). According to the report on renaissance zone progress, there were 58 renaissance zones in the state in 2017, and 1,665 projects have been approved and 1,314 projects have been completed since the inception of the renaissance zone program. A survey of renaissance zone communities conducted in 2017 indicated renaissance zones created 10 new businesses, 5 business expansions, and 189 new jobs. The benefits realized by the 46 projects that reached completion in 2017 amounted to $913,316 in income tax exemptions and $2.97 million in property tax exemptions. Information contained in the second report indicated the cities of Hazen and Mandan have properties located in both a renaissance zone and a TIF district. Mandan is the only city with properties receiving benefits from both the renaissance zone program and TIF program.

Testimony and Committee Considerations

The committee received information from a representative of the Tax Department regarding the number of claimants and the amount of income tax credits or deductions claimed through the renaissance zone program from 2006 through 2016. The committee also received information from a representative of the Department of Commerce regarding project-specific claimant and benefit data for properties located in a renaissance zone and a TIF district. The committee received an evaluation of the credit from a representative of the Bank of North Dakota, using REMI software, which indicated the renaissance zone program generated over 600 jobs and $47 million in annual gross domestic product during its peak in 2016. Industries that received the greatest benefit from the program were banking, retail, food service, agricultural support, and professional services. The direct cost to the state of providing renaissance zone tax benefits was $6.9 million for the 2013 through 2016 period. After offsetting additional revenues, the renaissance zone program cost the state $1.9 million for the 2013 through 2016 period. Assuming the program was discontinued at the end of 2017, the continued costs to the state for the 2017 through 2022 period would be $2.4 million, resulting in a total net loss to the state of $4.3 million for the 2013 through 2022 period.

The committee considered a bill draft that would have sunset the renaissance zone program effective January 1, 2020. The bill draft would have allowed a taxpayer to claim the remaining portion of any incentive earned before the program's sunset date. Representatives from the Economic Development Association of North Dakota, the North Dakota League of Cities, and the Cities of Bismarck, Fargo, Grand Forks, Mandan, Minot, and Milnor provided testimony in favor of retaining the credit. The testimony asserted the renaissance zone program is a vital tool cities use to meet infill and infrastructure needs. The committee received additional information regarding renaissance zones and TIF districts during its study of the property tax system, which included an assessment of the duplicative impact of property tax incentives and incentives impact on the remainder of the property tax base.

Conclusions

The committee makes no recommendation regarding renaissance zone credits or exemptions.

Tax Increment Financing Districts

Explanation of the Incentive

Chapter 40-58 allows a city to establish a TIF district by adopting a resolution finding one or more slum or blighted areas or industrial or commercial properties exist which require development, rehabilitation, or conservation in the public interest. The city must prepare a development or renewal plan and hold a public hearing for consideration of the plan. Approved development or renewal plans must be filed with the Department of Commerce. To implement the plan, the city may borrow money and accept financial assistance from any available source. The city may appropriate funds and make expenditures to carry out the plan. The city may issue bonds to finance the project and may issue refunding bonds to retire bonds previously issued.

Tax increment financing is used as the repayment mechanism for bonds issued for a development plan. Property values within the TIF district are "frozen" for property tax purposes at the time the district is established. Taxing districts

with taxable property situated in a TIF district may continue to levy property tax against the frozen value of the properties. As the district is developed and property values increase, the city may impose a TIF district special fund levy against any valuation exceeding the frozen value of properties in the district. The valuation exceeding the frozen value is referred to as the "incremental value" of the property. Revenue from the TIF district special fund levy is placed in a special fund and used to repay bonds or other financing for TIF district projects. 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 only applies to the incremental value of the property and may not extend for more than 15 years.

Perceived Goals in Creating or Altering the Incentive

Chapter 40-58, regarding urban renewal law, was enacted in 1955 with the passage of House Bill No. 774. The bill contained provisions noting slum and blighted areas exist in cities which contribute to the spread of disease and crime and substantially impair the sound growth of municipalities. The bill further provided these areas contribute little in tax revenue while consuming an excessive portion of revenue for police, fire, and other forms of public protection and services. The statement of necessity contained in the bill provided slum and blighted areas are a matter of state policy and state concern. The bill encouraged cities to provide maximum opportunity for the "rehabilitation or redevelopment of the urban renewal area by private enterprise." The bill also allowed a city to formulate a workable program for utilizing appropriate private and public resources to "eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation."

Specific provisions relating to TIF districts were added in 1973 to allow for the computation, certification, and remittance of tax increments resulting from urban renewal for reimbursement of the cost of urban renewal and the interest and redemption premiums on obligations issued to pay urban renewal costs. Testimony provided during the 1973 legislative session indicated urban renewal efforts had been discontinued at the national level and a need existed for local communities to take on renewal projects. Various legislative changes relating to TIF districts were made in later years, including an expansion of the use of TIF districts to develop unused or underutilized industrial commercial property and the exclusion of agricultural property from the definition of a blighted area. Revisions in 2011 included limiting the base year used in computing tax increments to no more than 25 taxable years. Revisions in 2017 required a city to notify impacted counties and school districts if the city was considering providing a property tax incentive on any parcel for more than 5 years. A county or school district receiving notice has the option of disallowing the incentive from impacting its portion of the tax on the property.

Testimony and Committee Considerations

The committee received information from a representative of the Department of Commerce regarding project-specific claimant and benefit data for properties located in a TIF district and a renaissance zone. The committee did not receive an analysis of TIF districts using REMI software because the software is limited to analyzing state economic factors, not local economic factors. The committee received testimony from representatives of the Economic Development Association of North Dakota in support of retaining TIF districts. The committee was informed TIF is available in 49 states and is a back-loaded incentive that provides a good return on investment. City representatives emphasized TIF is a local development tool and decisions regarding the use of TIF should remain within the purview of local communities that best understand community needs. It was the consensus of the committee that TIF districts should focus on redevelopment and avoid promoting sprawl. The committee did not receive testimony in opposition to retaining TIF.

Conclusions

The committee makes no recommendation regarding the use of TIF districts.

PROPERTY TAX SYSTEM STUDY

Three of the committee's studies pertained to a study of the property tax system. Section 18 of Senate Bill No. 2206 (2017) directed a study of the property tax system, with emphasis on the feasibility and desirability of providing property tax reform and relief. The study required consideration of all property classifications and taxing districts and evaluation of historical fluctuations in property values, the transparency of the property tax system, the processes and procedures available to taxpayers to contest valuations and assessments, the manner in which property tax information is provided to taxpayers, the process of determining taxing district budgets, and taxpayer participation and input in the property tax system. Section 7 of Senate Bill No. 2166 (2017) directed a study of the duplicative application of property tax incentives. The study required consideration of benefits received by properties located in both a TIF district and a renaissance zone; the duration for which a single property may benefit from the use of multiple property tax incentives; and the impacts on the remainder of the property tax base that is not receiving incentives created as a result of offering property tax incentives. Section 6 of Senate Bill No. 2166 (2017) directed a study of how city growth and infill development affects property taxes, and an evaluation on the return on investment for state and community projects. The study required an examination of various policies affecting city development patterns, including the impact of transfer payments between state and local governments; the cost of government services and infrastructure, including future liability; the amount of

tax revenue generated per increment of assumed liability for downtown areas; and whether certain areas of a city generate more revenue than expenses while other areas generate more expenses than revenue.

Background

Property tax is levied in every state and provides a vital source of revenue for local governments. In North Dakota, nearly $969 million in property tax was levied for payment in 2016. Property tax is levied on real property, personal property, or both, depending on the state. The tax on personal property was abolished in North Dakota in 1970. Classification and valuation marks the first step in the property tax cycle. Property is classified as either residential, commercial, agricultural, or centrally assessed. Assessors apply various calculations to the true and full value of property in each classification to arrive at a property's taxable value.

A property owner dissatisfied with the valuation of property has the right to contest the assessment to the local, county, and state boards of equalization or through the tax abatement process. Equalization is the process provided by law to adjust property assessments to be consistent with market value or agricultural value. A property owner may present evidence to the local board of equalization to argue for a reduction in the valuation of the person's property. In place of the equalization process, a property owner may elect to use a more formal abatement process in contesting a property tax assessment. Several layers of review are involved in the abatement process, which may culminate in appeal of the decision of the board of county commissioners to the district court and then to the North Dakota Supreme Court.

Once valuations are finalized following the equalization process, each taxing district prepares a preliminary budget based on anticipated expenditures for the upcoming year. The amount budgeted by a taxing district may not result in a tax levy exceeding levy limitations established by statute. The county treasurer has until December 26 to mail a property tax statement to the owner of each parcel of real property. Property statements must include the true and full value of the property; the total mill levy applied to the property; the amount of tax levied in dollars against the parcel by the county, school district, city, and township for the current year and the 2 immediately preceding taxable years; and the dollar amount of property tax savings realized by the property owner through legislative tax relief. Property taxes are due January 1 following the year of assessment and are payable without penalty until March 1 of the year in which due.

Testimony and Committee Considerations

Taxing District Budgets and Taxpayer Involvement

A taxing district must deliver its preliminary budget to the county auditor by August 10, along with notice of the date, time, and location of the taxing district's public budget hearing. The county treasurer provides written notice of taxing district budget hearings to property owners on or before August 31. The written notice contains information regarding the location at which a property owner may view the taxing district's preliminary budget, the estimated true and full value of the owner's property, the dollar amount of tax levied against the property in the immediately preceding taxable year and the estimated amount to be levied for the current taxable year, the difference between the prior year levy and current year estimated levy in dollars, information regarding state-provided property tax savings, and notice that citizens may present oral or written comments regarding each taxing district's property tax levy. The combined and enhanced notice requirements were enacted by Senate Bill No. 2288 (2017).

The committee received testimony from multiple city and county representatives regarding budgeting processes and implementation of the new notice requirements. According to the testimony, steps were taken by cities and counties throughout the budgeting process to keep taxpayers informed in the process. The committee received testimony from a representative of Cass County regarding the county's implementation of the new notice requirements. According to the testimony, the county received 30 calls and emails as a result of the 60,000 notices sent to taxpayers. County representatives attributed the low number of inquiries to the notices being easy to understand. County and city representatives noted low attendance at budget meetings persists despite enhanced efforts to educate and notify the public.

The committee discussed the possibility of using social media to enhance notification of public hearings and budget meetings. The committee acknowledged younger generations of taxpayers use social media as a platform to communicate, and discussed the use of social media by other entities, including the Fargo Police Department. City and county representatives acknowledged more taxpayers may be reached through the use of social media, but were hesitant about mandating the use of social media. The committee received a demonstration of OpenGov software, which is being used by Morton and Cass Counties. The software provides transparency relating to a political subdivision's budget information and provides the public a user friendly platform on which data may be viewed and analyzed.

The committee received information regarding the new online levy lookup tool created by the Tax Department and received a state-wide property tax increase report prepared using the online tool. The committee received information regarding recent township mill levy errors and reviewed the process in which political subdivisions are audited. Testimony provided by a representative of the State Auditor's office indicated the office is required to audit various political subdivisions once every 2 years. Cities with a population of fewer than 500 may file an annual audit report in lieu of receiving a biennial audit. According to the testimony, 263 of the 357 incorporated cities in the state fall below the audit threshold.

Impact of Property Tax Incentives

The committee reviewed information regarding property tax exemptions and the date each tax exemption was enacted. The committee received information from city representatives regarding the total amount of property tax exempted by cities on a discretionary and nondiscretionary basis. The committee reviewed the use and impact of various tax incentives, including new residential and builder owned exemptions and tax incentives available through the use of TIF districts and renaissance zones. The governing body of a city or county may approve a property tax exemption for up to $150,000 of the true and full value of a new single-family, condominium, or townhouse residential property for the first 2 taxable years after the residence is occupied for the first time. The governing body of a city or county also may approve a property tax exemption for new single-family residential property which applies for the taxable year in which construction began on the property and the next 2 taxable years if the property remains unoccupied and owned by the builder. Currently 1,734 properties are receiving the new residential property tax exemption statewide and 119 properties are receiving the builder-owned property tax exemption. The committee questioned the use of these incentives as the incentives are offered to encourage growth, and testimony from city representatives illustrated the challenges cities are facing to pay for infrastructure associated with new growth.

The committee received detailed information regarding incentives tied to renaissance zones and TIF districts and the impact these incentives had on the remainder of the property tax base. The committee received a listing of the properties that received a TIF incentive following the receipt of a renaissance zone incentive. The information indicated only two properties in the state currently are slated to receive a TIF incentive following the receipt of a renaissance zone incentive. According to information received from a representative of the City of Fargo, the value of exempt property in the city is equal to 2.57 percent of the total taxable value of property in the city, with renaissance zone property accounting for .084 percent of the total amount of exempt property. The testimony indicated new industry and renaissance zone incentives provide a positive return on investment and spur activity that would not have occurred otherwise. Property values in Fargo's downtown area increased by 4 percent over the increases in property values in the nondowntown area in 2017. The committee received information from a representative of the City of Bismarck which indicated 4 percent of the 25,255 parcels in the city receive some type of full or partial property tax exemption. According to the information, using the 2018 exempted market value and the 2017 mill levy, the estimated amount of property tax not being collected from renaissance zone properties in Bismarck in 2018 is $307,596. Information received regarding the use of renaissance zones in Minot indicated 91 projects have been approved since the city established its renaissance zone in 2001. Of the completed projects, the total assessed value has increased from $6,150,700 to $26,532,200, representing an increase of approximately 330 percent. The committee received testimony expressing wide support from city representatives regarding the use of renaissance zones.

Committee members noted incentives offered through the use of TIF districts and renaissance zones are temporary but the increased value added to the property tax base is permanent. Committee members indicated property owners that do not receive a property tax incentive through these programs still receive a benefit through the increased tax revenue ultimately generated by the properties that received the incentive.

City Growth and Infill Development

The committee received information regarding city growth and development, the delayed infrastructure maintenance costs associated with rapid growth outside a city's downtown area, and city development plans that will bolster a city's tax base. The committee received a presentation regarding methods to build strong cities. The presentation indicated growth creates the illusion of wealth because cities realize a windfall in property tax when a developer assumes all the costs of building new residential property. Cities suffer when the cities have to assume all the maintenance costs for infrastructure that cannot be supported by the existing tax base. The more areas grow, the poorer the areas become and cities are forced to absorb the costs of the city development plans. The cities that used to be built incrementally over time are now built in large blocks. The benefits to building incrementally is that infrastructure also ages incrementally. Building new developments in large blocks results in all maintenance being required at the same time. According to the presentation, cities build wealth by making modest investments over a broad area over a long period of time. Cities need to make high-return investments to remain solvent. Decisions, such as replacing old multi-unit structures with single-unit structures with a large amount of green space, degrade the higher value tax base.

The presentation noted city officials must think in terms of value per acre and focus on high-intensity development. A ratio of $20 of private investment for every $1 of public investment leads to a stable environment. The committee reviewed the value per square foot of properties in Fargo. The downtown area of Fargo has the highest property values per square foot, with many properties valued at over $100 per square foot. Commercial properties on the western edge of the downtown area ranged in value from $50 to $100 per square foot and single family homes and residential apartment buildings ranged in value from $26 to $52 per square foot. Apartment buildings valued at over $50 per square foot keep pace with service costs. Owners of higher-value commercial buildings generally pay more in property taxes than the buildings require in services. Lower-density subdivisions consisting of $300,000 homes on 2-acre lots likely will need to rely on the broader community to help subsidize the costs of services. The committee also received information regarding the value per square foot of properties in Bismarck. The property that generated the most tax dollars in

Bismarck is the Sanford Medical Center. The committee saw similar patterns of high value per square foot concentrations in the downtown areas in Bismarck with lower value per square foot concentrations on the outskirts of the city.

The committee received information from a representative of the Bank of North Dakota regarding partnership for assisting community expansion (PACE) programs. The PACE programs are administered by the bank in cooperation with communities across the state to buy down the interest rate on loans used for new or expanding business needs. The committee received testimony indicating the use of these types of loans may be preferable to using property tax incentives to encourage business and community development. The committee questioned whether incentives should be tied to the dollars of revenue generated per square foot. The committee indicated cities need to be mindful in applying a development pattern that generates enough cashflow to service its future liabilities and carefully target the manner in which property tax incentives are applied.

Special Assessments

The committee reviewed the procedures available for the imposition of special assessments by cities, counties, townships, water resource districts, and recreation service districts. The committee reviewed information relating to the prevalence of special assessments and the amount of special assessments levied by the 10 most populous cities in the state. Fargo had the highest ratio of special assessments to property tax for the 2017 tax year, certifying $32,081,933 in special assessments and levying $31,526,029 in property tax. The committee reviewed the types and amounts of special assessment fees charged in the 20 highest population cities in the state and received testimony regarding the use of special assessments from representatives of multiple cities. The testimony indicated the types and amounts of fees charged by cities for special assessments varies widely. The use of city engineers or external engineering services for special assessment projects also varies by city.

The committee reviewed the use of special assessments in other states and reviewed 2001-02 and 2011-12 interim studies relating to special assessments. Based upon legislation discussed during the 2001-02 interim to exclude property owned by a political subdivision from consideration in protests against the formation of a special improvement district, the committee considered a bill to remove property owned by a political subdivision from the total area within an improvement district for purposes of calculating whether protests were received from the owners of a majority of the area of the property included in the proposed district. Testimony regarding the bill noted protests from the owners of a majority of the property area within the proposed districts is required to bar the formation of a district. The committee determined a district could be drawn with more than 50 percent of the property area within the district owned by the political subdivision that would benefit from the creation of the district, thus effectively barring private property owners from protesting the formation of the district. The committee concluded the bill would safeguard against that result. The committee also noted the fairness principal the bill seeks to achieve is sound, but there may be some unintended consequences to excluding property owned by political subdivisions from consideration during the protest period.

The committee received information from representatives of the Bismarck-Mandan Chamber of Commerce and Bismarck-Mandan Development Association regarding a task force formed to address issues relating to infrastructure funding and special assessments. The task force recommended requiring future developers pay the aboveground and belowground costs of a project and build the costs into the purchase price of the lot, rather than using the current system that only requires the developer to pay the belowground costs, leaving the aboveground costs to be assessed to the purchaser. The new approach would eliminate special assessment districts and allow homeowners to amortize the additional lot costs over the life of their mortgage. In regard to special assessments for ongoing maintenance costs, the task force recommended the imposition of a street utility tax to replace special assessment revenue. The tax would appear as a monthly charge on all residential and commercial utility bills. The charge would be determined based on the city's road and street budget needs for each upcoming year. The task force noted the use of a street utility tax would require a legislative change because Senate Bill No. 2326 (2017) prevents political subdivisions from seeking voter approval of any funding mechanism not in a city's home rule charter before August 1, 2017. Committee members expressed concerns regarding a taxpayer's ability to weigh in on the fee in the future and that a ballot question may be structured so the fee is easy to sell on the front end but could lead to future liability. Committee members indicated legislation should require the ballot language to include certain protections.

The committee reviewed a bill draft that would have required money remaining in a special assessment fund be credited to the property owners in the special assessment district. The committee received testimony from various city representatives regarding the difficulty in administering the bill draft.

The committee also reviewed a bill draft that would have increased the amount of the homestead tax credit for special assessments from $6,000 to $15,000 and reduced the interest rate charged on the credit from 9 percent to 6 percent. A second bill was revised to retain the same credit increases from $6,000 to $15,000, but linked changes in the interest rate charged on the credit to changes in the consumer price index. The committee received information from a representative of the Tax Department indicating the estimated fiscal impact of the bill would be less than $5,000 for the 2019-21 biennium. According to the testimony, existing special assessment liens may not be satisfied when property is

transferred from parent to child, or in other situations involving transfers using a quitclaim deed. It was noted additional safeguards may need to be added to protect the state's lien.

The committee also reviewed bill drafts to remove the requirement for 60 percent voter approval before the governing body of a park district may issue bonds. The bill drafts sought to clarify a previous Attorney General opinion and make bonding a more economical and viable financing option for park districts to allow park districts to move away from using special assessments. The committee considered a bill that would have allowed the issuance of bonds without an election and a bill that allows the issuance of bonds without an election but provides taxpayers with a formal protest period.

Recommendations

The committee recommends House Bill No. 1041 to increase the amount of the homestead tax credit for special assessments and tie the interest rate applied to the credit to a moving index.

The committee recommends Senate Bill No. 2040 to exclude property owned by a political subdivision from consideration in protests against the formation of a special improvement district.

The committee recommends Senate Bill No. 2041 to allow park districts to issue bonds without an election but provide for a formal protest period.

HYBRID LONG-TERM CARE PARTNERSHIP PLAN INSURANCE TAX CREDIT STUDY

Senate Bill No. 2230 (2017) directed the Legislative Management to study the feasibility and desirability of providing an income tax credit to individuals for premiums for hybrid long-term care partnership plan insurance coverage. The study required consideration of the feasibility and desirability of incentivizing asset protection that may be equal to the amount paid out by the hybrid long-term care partnership plan. As introduced, the bill would have expanded the existing provisions in Section 57-38-29.3, which provide an income tax credit of up to $250 per year for each insured individual for premiums paid for qualified long-term care partnership plan insurance coverage, to apply to premiums paid for long-term care insurance coverage that is part of a hybrid long-term care insurance policy.

Background

As an individual ages, the likelihood of being afflicted with a disability, physical illness, or cognitive impairment increases, as does the likelihood of requiring long-term care. Types of long-term care services include home health care, nursing home care, respite care, and hospice care. Services may be delivered in an individual's own home or in a nursing home or assisted living facility. Long-term care insurance may be purchased individually or through a group long-term care insurance plan offered by an employer. Long-term care insurance policies typically include certain consumer protection provisions as well as inflation protection so benefits associated with the policy increase along with the costs of long-term care. Benefits generally are paid on a reimbursement basis, as services are provided, or on an indemnity basis, which allows the insured to receive a set daily dollar amount when services are needed.

Testimony provided by a representative of the American Council of Life Insurers on Senate Bill No. 2230 indicated 35 percent of individuals age 85 or older are using some form of paid long-term care. According to the National Association of State Medicaid Directors, Medicaid pays over 40 percent of the costs of long-term care. Information published by the American Council of Life Insurers indicates 4.4 million individuals held long-term care policies in 2015. The number of seniors who will require long-term care is anticipated to grow to 15 million by 2050 when the youngest members of the baby boomer generation reach age 85.

A number of states offer either tax credits or tax deductions to incentivize the purchase of long-term care partnership plan insurance and help ease the burden on state Medicaid systems. The committee reviewed the list of states that offer a tax credit for long-term care insurance and those that offer a deduction. A deduction also is offered at the federal level, pursuant to 26 U.S.C. Section 213, for premiums for qualified long-term care insurance policies meeting the requirements under 26 U.S.C. Section 7702B. North Dakota's tax credit was enacted through the passage of House Bill No.1209 (2009).

The primary difference between traditional long-term care insurance policies and "hybrid" long-term care insurance policies is that hybrid policies often combine long-term care insurance coverage with a life insurance policy or an annuity. Hybrid policies have gained popularity in recent years as the policies allow the insured more flexibility than traditional long-term care policies. A common example of a hybrid policy is a single premium life insurance policy sold with a long-term care acceleration rider. The acceleration rider allows the insured to access death benefits for a set period in the form of level monthly payments to cover qualified long-term care service expenses. Another example of a hybrid policy is a single premium deferred annuity that allows a policyholder to make penalty-free withdrawals from the account value for qualified long-term care service expenses. The federal tax treatments of hybrid plans vary based on the policy's structure. The National Association of Insurance Commissioners issued a number of long-term care federal policy recommendations to Congress in June 2017, which included establishing more generous federal tax incentives and allowing products that combine long-term care coverage with various other insurance products.

Testimony and Committee Considerations

The committee received information from a representative of the Tax Department regarding claimant and expenditure information for tax years 2009 through 2016 for the existing income tax credit for premiums paid for long-term care partnership plan insurance. According to the testimony, a total of $548,884 in credits was claimed on 1,346 returns in tax year 2016, which indicates taxpayers are claiming the maximum amount of credits available per taxpayer.

The committee received information from a representative of the North Dakota Long Term Care Association regarding the costs of various types of long-term care services and the estimated percentage of individuals who will need long-term care services at some point in their lives. The cost of long-term care can range from $25 per day to $265 per day depending on the type of long-term care required. An individual has a 50 percent chance of requiring long-term care services in the individual's lifetime. The committee was informed Medicare and Medicaid alone will not be able to meet the long-term care needs of the state's growing elderly population.

The committee received information from a representative of the Department of Human Services regarding the costs incurred by the state in providing long-term care services. Nearly $694 million of the $2.6 billion the department received for medical assistance grants in the department's budget for the 2017-19 biennium is for long-term care services. The committee reviewed the number of individuals who receive long-term care services on a monthly basis and was informed state expenditures for long-term care have increased each biennium since the 2009-11 biennium. Committee members expressed concern at the rising costs of nursing facility rates. According to the testimony, North Dakota is one of the higher daily rates states because the state has equalized reimbursement rates for Medicaid and private pay individuals.

The committee received information from a representative of the Insurance Department indicating the number of individuals purchasing stand-alone, long-term care policies is shrinking drastically. According to the testimony, a dramatic spike in long-term care costs is due to increased life expectancies and higher quality assisted living centers. Due to rising premiums, individuals who purchased policies in the 1990s must decide whether they can afford to maintain their policies. The department noted it has received requests from insurance companies to increase the premiums on some policies by up to 300 percent. The department requires insurance companies to provide options to customers facing sharp increases to help customers retain coverage. Companies are evaluating whether these products were adequately priced when initially offered. Companies are not realizing profits on older policies and must determine how to price and model these products going forward.

According to the testimony, a definition for a "hybrid" or "combination" policy is needed to create a tax credit for premiums paid for hybrid long-term care policies because no other state has a legal definition for these types of policies. The committee received a framework that could serve as a starting point for a definition. The committee was advised other considerations may need to be taken into account if a credit is pursued, including whether a cap is placed on the credit. It was noted some polices may allow a taxpayer to overpay the premium to increase the cash value of the policy, thus generating a larger tax credit. The committee was cautioned offering a credit may prompt requests for similar treatment from those in the stand-alone long-term care market.

Conclusions

The committee makes no recommendation regarding its study of the feasibility and desirability of providing an income tax credit to individuals for premiums paid for hybrid long-term care partnership plan insurance coverage.

ADDITIONAL REPORTS

Oil and Gas Gross Production Tax Allocation Reports

The committee was assigned the responsibility to receive annual reports from the Tax Commissioner from compiled reports from counties and school districts receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended. Pursuant to Section 57-51-15(6) the report pertaining to allocations received by counties is required to be provided to the Legislative Council within 45 days after the end of each calendar year. The Tax Department sent revenue and expenditure reporting forms to each county that received oil and gas gross production tax distributions. Counties are required to report the amount of revenue deposited in the county general fund, other funds, or allocated to townships. If revenue is deposited in a county's general fund, the county must further specify the percentage of the county's general fund that consists of revenue allocations and the primary categories of expenditures made from the county's general fund. The consolidated reports indicated a total of $417,083,343 was received by the 16 counties receiving oil and gas gross production tax distributions in calendar year 2016, and $115,368,880 was received in calendar year 2017. The reports indicated each responding county placed the revenue allocations its general fund.

Pursuant to Section 57-51-15(7) the report pertaining to allocations received by school districts is required to be provided to the Legislative Council within 45 days after the end of each fiscal year. The Tax Department used surveys and worked in cooperation with the Department of Public Instruction to gather the required information. The Tax Department sent revenue and expenditure reporting forms to each school district that received oil and gas gross

production tax distributions. School districts are required to report whether revenue allocations were used for general operating expenses, debt service, capital projects, or other purposes. The report indicated a total of $33,676,503 was received by the 60 school districts receiving oil and gas gross production tax distributions in fiscal year 2017 and $31,208,324 was received in fiscal year 2018.

Testimony and Committee Considerations

Representatives from the agencies responsible for compiling and receiving the reports indicated outside requests for the reported information had not been received. Committee members questioned the utility of the reports as revenue allocations are commonly comingled in the political subdivision's general fund, making further determination of the exact purpose for which revenue allocations were expended nearly impossible. The committee acknowledged the state imposes a number of reporting requirements at the local level and viewed this report as one that could be eliminated. The committee determined the time county, school district, and Tax Department employees spent preparing and compiling these reports may be better directed toward other purposes and considered a bill to eliminate the revenue and expenditure reporting requirements pertaining to county and school district oil and gas gross production tax revenue allocations.

Recommendation

The committee recommends Senate Bill No. 2042 to eliminate the revenue and expenditure reporting requirements for schools and counties that receive oil and gas gross production tax allocations.

Social Service Pilot Program Report

The committee was assigned the responsibility to receive a report from the Department of Human Services on the status of the state-paid economic assistance and social service pilot program and the development of a plan for permanent implementation pursuant to Section 50-34-01. The report indicated the study conducted during the pilot program involved over 40 committee meetings of county social service directors, county staff, regional supervisors, and state policy staff. The focus while developing a plan for permanent implementation was to improve service and preserve access to services by shifting administrative resources to service delivery. The study indicated three administrative structure options for the delivery of social services:

- Allow the pilot project expire and return to a largely county-based, county-directed delivery system with the previous degree of county board control;
- Transfer all costs and all employees to the state and shift to a state administered system, like most other states, without a formal role for counties; or
- Expand the use of multi-county units or "zones" to increase the size of social service units to support the changing delivery models being proposed, while preserving county employment and guaranteeing local access and a local governance role through county or multi-county boards.

The report indicated most counties seem receptive to moving forward cautiously with more state administration as long as rural counties retain access to services. According to the report, the process of restructuring social services is ongoing and will not be completed in 1 biennium.

TRIBAL TAXATION ISSUES COMMITTEE

Section 33 of House Bill No. 1015 (2017) established the Tribal Taxation Issues Committee. The committee is composed of 10 members as follows: the Governor, who was designated by the Legislative Management to serve as Chairman of the committee, the Lieutenant Governor, the Tax Commissioner, the Executive Director of the Indian Affairs Commission, the Majority and Minority Leaders of the House of Representatives and the Senate, and the Chairmen of the Finance and Taxation Standing Committees of the House of Representatives and the Senate. The nonlegislative members of the committee serve as nonvoting members. The legislation required the committee Chairman to invite tribal chairmen to each committee meeting.

The Tribal Taxation Issues Committee was directed to study tribal taxation issues, including the tax collection agreements that exist between the tribes and the state, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, and the procedure for withdrawal from an agreement and how to handle disputed funds. In addition, Section 33 authorized the Tribal Taxation Issues Committee to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.

Section 31 of House Bill No. 1015 suspended North Dakota Century Code Section 54-35-23 through July 31, 2019. Section 54-35-23 provides for the Tribal and State Relations Committee. This committee, which was created in 2005, conducts joint meetings with the North Dakota Tribal Governments' Task Force. The North Dakota Tribal Governments' Task Force is composed of six members, including the Executive Director of the Indian Affairs Commission, or the Executive Director's designee; the Chairman of the Standing Rock Sioux Tribe, or the Chairman's designee; the Chairman of the Spirit Lake Tribe, or the Chairman's designee; the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, or the Chairman's designee; the Chairman of the Turtle Mountain Band of Chippewa Indians, or the Chairman's designee; and the Chairman of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, or the Chairman's designee. The Tribal and State Relations Committee is required to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.

The committee members were Governor Doug Burgum (Chairman); Representatives Al Carlson, Craig Headland, and Corey Mock; Senators Dwight Cook, Joan Heckaman, and Rich Wardner; and Citizen Members Scott J. Davis, Indian Affairs Commission; Ryan Rauschenberger, Tax Department; and Brent Sanford, Lieutenant Governor.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th 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, from 1789 to approximately 1820, 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 of it. This is the origin of the term reservation.

With the enactment of the federal 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. 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 federal Indian Civil Rights Act of 1968, the effect of which 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 states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. Federal acts since 1968 designed to enhance tribal self-determination 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. Both 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 Court held that the Cherokees could not be regarded as a foreign state within the meaning of Article III of the United States Constitution, so as to bring them within the federal judicial power and permit them to maintain an action in the Court. However, Chief Justice John Marshall characterized Indian tribes as "domestic dependent nations." In *Worcester v. Georgia*, 31 U.S. 515 (1832), the Court further discussed the status of Indian tribes. The Court stated "[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 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. A 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. Under this chapter, any one or more public agencies may enter an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any dispute in accordance with Chapter 54-40.2 or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

STATE-TRIBAL TAX REVENUE SHARING AGREEMENTS

The committee received information from the Tax Department regarding the five tax revenue sharing agreements in effect between the state and tribal nations within the state and the revenue allocated to tribes in accordance with each agreement.

Tribe	Effective Date	Tax Type	Current Revenue Allocation		Admin. Fee	Tribal Share of Fiscal Year 2017 Revenue
			Tribe	State		
Standing Rock Sioux Tribe	July 1, 1993	Cigarette and other tobacco products	87%	13%	1%	$123,391
Standing Rock Sioux Tribe	January 1, 1999	Motor fuel and special fuel	87%	13%	1%	$487,714

Tribe	Effective Date	Tax Type	Current Revenue Allocation		Admin. Fee	Tribal Share of Fiscal Year 2017 Revenue
			Tribe	State		
Spirit Lake Tribe	September 1, 2006	Motor fuel and special fuel	76%	24%	1%	$268,769
Turtle Mountain Band of Chippewa Indians	September 1, 2010	Motor fuel and special fuel	96%	4%	1%	$724,086
Three Affiliated Tribes of the Fort Berthold Reservation	September 1, 2007	Motor fuel and special fuel	70%	30%	1%	$1,990,770
Three Affiliated Tribes of the Fort Berthold Reservation	July 1, 2008	Oil and gas taxes	50%	50%	none	$122,665,340

Cigarette and Tobacco Excise Tax Agreement

On July 1, 1993, a collection agreement between the Tax Commissioner and the Standing Rock Sioux Tribe became effective. Under this agreement, the Standing Rock Sioux Tribe levies a cigarette and tobacco excise tax on all licensed wholesalers and distributors operating on the Standing Rock Sioux Reservation. The tax rates are identical to the state tax rates. The Tax Department serves as an agent of the tribe in collecting the tax. The renegotiated terms of the agreement, which became effective on May 1, 2015, provide 87 percent of the tax, less a 1 percent administrative fee, is returned to the tribe. Thirteen percent, plus the 1 percent administrative fee, is deposited in the general fund.

Motor Vehicle Fuel and Special Fuel Tax Agreements

The state has entered motor vehicle fuel and special fuel tax agreements with all tribes in the state except the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. The tax applies at a rate of $0.23 per gallon to sales of motor vehicle fuel and special fuel within the exterior boundaries of the reservation. The state's agreement with:

- The Standing Rock Sioux Tribe became effective January 1, 1999. The renegotiated terms of the agreement, which became effective on May 1, 2015, provide 87 percent of the tax, less a 1 percent administration fee, is returned to the tribe. Thirteen percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Spirit Lake Tribe, which became effective September 1, 2006, provides 76 percent of the tax, less a 1 percent administration fee, is returned to the tribe. Twenty-four percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Three Affiliated Tribes of the Fort Berthold Reservation, which became effective September 1, 2007, provides 70 percent of the tax, less a 1 percent administration fee, is returned to the tribe. Thirty percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Turtle Mountain Band of Chippewa Indians, which became effective September 1, 2010, provides 96 percent of the tax, less a 1 percent administration fee, is returned to the tribe. Four percent, plus the 1 percent administration fee, is deposited in the general fund.

The committee received testimony from tribal representatives expressing a desire for sharing agreements to address bulk fuel sales, in addition to retail sales of fuel.

Oil and Gas Tax Agreement

The oil and gas revenue sharing agreement between the Three Affiliated Tribes and the state was signed June 10, 2008, by Three Affiliated Tribes Chairman Marcus D. Wells, Jr., and Governor John Hoeven and was to remain in effect for 24 calendar months after July 1, 2008. The agreement was entered pursuant to the authority provided in Chapter 57-51.2, which was enacted following the passage of House Bill No. 2419 (2007). A renegotiated agreement was signed on January 13, 2010, by Three Affiliated Tribes Chairman Marcus D. Levings and Governor John Hoeven. The provisions of the 2010 agreement were to remain in effect indefinitely, unless formally cancelled by either party.

In 2013, Chapter 57-51.2 was extensively revised to provide more beneficial terms for the Three Affiliated Tribes under an oil and gas tax agreement. A new agreement implementing the 2013 legislative changes was signed on June 21, 2013, by Three Affiliated Tribes Chairman Tex Hall and Governor Jack Dalrymple. The 2013 agreement is to remain in effect until formally cancelled by either party and specify that, "[e]ither party may terminate [the] Agreement without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the other party."

Legislation enacted by the 2015 Legislative Assembly eliminated various triggered oil extraction tax exemptions and rate reductions. House Bill No. 1476 (2015) reduced the 6.5 percent oil extraction tax rate to 5 percent for production beginning January 1, 2016. Chapter 57-51.2 also was amended by the passage of Senate Bill No. 2226 (2015), but the

maximum oil extraction tax rate that may be imposed on production subject to an agreement entered under Chapter 57-51.2 remained unchanged. Specifically, Section 57-51.2-02(3) provides:

> The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas production attributable to trust lands on the reservation and on trust properties outside reservation boundaries may not exceed six and one-half percent but may be reduced through negotiation between the governor and the tribal governing body.

Similar language pertaining to the applicable oil extraction tax rate also is found in the 2013 agreement between the Governor and the Three Affiliated Tribes, which states "the tax rate attributable to production and extraction of oil from Trust Lands must not exceed eleven and one half percent" and "the tax rate attributable to production and extraction of oil from Non-Trust Lands must not exceed eleven and one half percent (11.5%) subject to applicable exemptions in N.D.C.C. chapters 57-51 and 57-51.1." The agreement further provides the parties to the agreement agree to the imposition of taxes at the rates specified in the agreement and "[n]either party will adjust, raise or lower the production and extraction taxes on oil and gas activities within the exterior boundaries of the Fort Berthold Reservation during the term of the Agreement."

Section 57-51.2-03, which states Chapter 57-51.2 supersedes any inconsistent provisions of Chapters 57-51 and 57-51.1, also remained unchanged under Senate Bill No. 2226. The changes effectuated by the passage of Senate Bill No. 2226 mainly expanded the scope of Chapter 57-51.2, which now applies to agreements entered by the Standing Rock Sioux Tribe and the Turtle Mountain Band of Chippewa Indians in addition to the Three Affiliated Tribes, and to add confirmation requirements for future agreements. Specifically, provisions were placed in Section 57-51.2-01 noting an agreement made pursuant to Chapter 57-51.2 "is subject to confirmation by a majority of members elected to the house of representatives and the senate and does not become effective until its confirmation date or the effective date in the agreement, whichever is later." The changes in Senate Bill No. 2226 are effective for agreements entered after July 31, 2015.

Following the January 2016 oil extraction tax rate reduction from 6.5 to 5 percent under Chapter 57-51.1, the oil extraction tax rate applied to production subject to the 2013 agreement also was reduced to 5 percent. The 2013 agreement was not modified prior to the rate reduction nor did either party submit the required 30-day written notice of an intent to terminate the agreement following implementation of the rate reduction.

The committee received testimony from representatives of the Three Affiliated Tribes indicating 88 percent of the funds that comprise the tribe's budget are derived from oil and gas royalties and taxes. According to the testimony, it is the tribe's legal position that one-half of the 1.5 percent tax not collected when the rate was unilaterally lowered from 11.5 to 10 percent is due to the tribe. The tribal business council passed a resolution on January 11, 2017, stating the tribe intends to collect the tribe's portion of the 1.5 percent tax which was not collected by the state. The tribe noted it has discussed with the oil companies how the tribe can realize the tax it asserts is due under the agreement. Tribal representatives provided three possible means of resolving disagreements related to the oil and gas agreement:

- Remain in the agreement, but receive a commitment from the state regarding how the agreement will be modified in terms of revenue sharing, particularly in regard to allocation of revenues from trust land.
- Remain in the agreement, but negotiate with oil companies for the payment of one-half of the 1.5 percent tax that was not collected by the Tax Commissioner when the tax rate was unilaterally lowered.
- Submit notice to the state of the tribe's intent to terminate the agreement, and terminate the agreement if a resolution is not reached within 30 days. If the agreement is terminated, the tribe would notify oil companies all future tax is due and payable directly to the tribe.

The committee was informed the tribe's preference is to remain in the agreement but receive a more equitable division of revenues. According to the testimony, the tribe would consider a revenue split of 80 percent to the tribe and 20 percent to the state on trust lands and a revenue split of 80 percent to the state and 20 percent to the tribe on fee land. Any renegotiated revenue split would apply prospectively to newly drilled wells. The existing 50/50 revenue split would continue on any wells drilled before the effective date of a renegotiated agreement. The tribe also requested changes to the restrictions placed on tribal-state tax agreements by the 2015 Legislative Assembly, which require legislative ratification of agreements. Tribal representatives suggested a compromise of allowing agreements entered during the interim to become effective without legislative ratification, but providing the Legislative Assembly authority to rescind the agreement during the next legislative session if the Legislative Assembly does not support the agreement. Tribal representatives indicated the tribe would like to preview any proposed legislation intended to be introduced during the 2019 legislative session.

Committee members expressed understanding regarding the strain placed on the tribes' budgets as a result of falling oil and gas revenues because the state experienced similar budgetary strains. Committee members and tribal representatives acknowledged the chilling effect placed on the oil industry as a result of the threat of dual taxation.

Committee members agreed both the state and the tribe benefit when oil and gas resources are developed under a stable taxing environment.

Sales and Use Tax Collection Agreement

House Bill No. 1406 (2015) created Chapter 57-39.8, which authorizes the Governor to enter an agreement with the Standing Rock Sioux Tribe for the state administration and collection of state-level and local-level tribal sales, use, and gross receipts taxes imposed within the exterior boundaries of the North Dakota portion of the Standing Rock Sioux Reservation. The chapter outlines the parameters for an agreement, including provisions relating to the rate of tax imposed, conformance with the state's sales tax base, allocation of revenues, the Tax Commissioner's authority to administer and collect the tax, and the proper venue for resolving disputes arising from an agreement.

The agreement between the state and the Standing Rock Sioux Tribe became effective July 1, 2016, and provided for an 80/20 tribal/state split of tax collections. The agreement required the Standing Rock Sioux Tribe to impose tax at a rate of 5 percent for general sales and use tax, 3 percent for sales and use tax on new manufactured homes, 7 percent for alcohol gross receipts tax, and 3 percent for farm machinery gross receipts tax on new farm machinery and new farm irrigation equipment, in conformance with the rates imposed for state sales, use, and gross receipts taxes. The Standing Rock Sioux Tribe also imposed a .25 percent tribal local tax that applied to all transactions subject to the state-level taxes.

On March 7, 2017, the Tax Department discontinued its administration of the Standing Rock Sioux Tribe's sales, use, and gross receipts taxes, including the tribal .25 percent local tax, as a result of disagreements concerning the collection of use tax from tribally owned businesses. The Standing Rock Sioux Tribe assumed the administrative duties relating to its tax when the collection agreement was terminated.

Representatives of the Standing Rock Sioux Tribe indicated certain changes would be required before the tribe would consider entering a new collection agreement. Requirements mandating the tribe report on the use of tribal tax revenue and provisions capping the amount of revenue that may be allocated to the tribe at $2 million per biennium would need to be removed. According to the testimony, provisions allowing sharing of retailer tax information, to allow the tribe to determine which types of business on the reservation are tax-generating businesses, would need to be added.

Some committee members expressed agreement with the tribe's concerns regarding reporting requirements and caps. Other committee members indicated that caps may need to be included in an agreement for purposes of the Legislative Assembly formulating the state budget. Tribal representatives noted the tribe's budgeting process is hindered by the application of caps.

Representatives of several tribes expressed concern regarding the taxation of purchases made by an enrolled member of a tribe within the boundaries of a reservation that does not have a revenue sharing agreement in place. Tribal representatives indicated the burden is being placed on each enrolled member to prove that member's exempt status. The testimony indicated not all enrolled members, including children and some elders, have tribal identification cards. According to the testimony, some retailers located within reservation boundaries are placing an additional burden on enrolled members by requiring enrolled members to obtain coded sales tax exemption cards to make tax-exempt purchases. Tribal representatives asserted the burden of proving a purchaser is not entitled to the exemption should be on the retailer. The testimony asserted retailers should assume an individual making a purchase within the boundaries of a reservation is an enrolled member unless the retailer has reasonable grounds to believe otherwise.

Testimony from representatives of the Tax Department indicated a retailer issued a sales and use tax permit is a collection agent of the state and is required to collect sales tax on purchases made by nonnatives. If a retailer is audited by the state, the retailer must provide some type of record or documentation to verify the exempt status of a sale. Issuance of coded sales tax exemption cards is an individual business decision initiated by a retailer and is not a practice mandated by the state. According to the testimony, a tribal member who operates a business as a sole proprietor, or a business incorporated through the tribe, is not required to collect sales tax from a native or nonnative purchaser because the business is not being afforded protections by the state.

Framework for Future Revenue Sharing Agreements

Committee members and tribal representatives agreed the primary goal of revenue sharing agreements is to avoid dual taxation and promote economic development. The Tax Department reported to the committee the results of an extensive review of revenue sharing agreements in other states to determine best practices. The report included information on formula-based revenue sharing agreements in Minnesota and Montana.

According to the information, Minnesota uses a "blind till concept" when collecting sales tax pursuant to an agreement, meaning tax is collected from every customer on tribal land regardless of whether the customer is a tribal member or is nontribal. Revenue is allocated using a per capita calculation that takes into account average income within a county,

sales tax paid based on the average income, and the location of the tribe in relation to urban areas. Montana also uses a per capita calculation that includes an enrolled member annual adjustment that takes into account tribal enrollment records, voter records, and data from the tribal enrollment office. In both states, fees are not charged for administration of the agreement and revenue is distributed to the tribes on a quarterly basis.

Tax Department representatives reviewed a proposed framework for a sales, use, and gross receipts tax revenue sharing agreements entered between the Governor and any of the four of the tribal nations in the state. The framework provided a means to remedy concerns expressed by representatives of all tribes regarding requirements for legislative approval of sharing agreements. According to the testimony, the framework would allow an agreement to be entered at any time, including times when the Legislative Assembly is not in session. Committee members and tribal representatives provided recommended changes to the framework, which included recommendations to add language addressing revenue allocation and exemptions for tribal businesses, clarify the Tax Commissioner's authority to cancel an agreement must be exercised in consultation with the Governor, emphasize the tribes' sovereignty and right to tax, and allow the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation the option to enter an agreement.

Further comments were solicited throughout the interim and incorporated into two privately sponsored bill drafts that would provide the framework for revenue sharing agreements pertaining to sales, use, and gross receipts taxes and agreements pertaining to alcoholic beverage and tobacco products wholesale taxes.

Sales, Use, and Gross Receipts Tax Revenue Sharing Agreements

The committee considered a bill draft [19.0314.01000] relating to the framework for tribal-state sales, use, and gross receipts tax revenue sharing agreements. The bill draft would have provided for the repeal of the chapter of the North Dakota Century Code pertaining to sales, use, and gross receipts tax revenue sharing agreements between the state and the Standing Rock Sioux Tribe, and the creation of a new chapter pertaining to tribal-state sales, use, and gross receipts tax revenue sharing agreements between the state and any of the five tribal nations in the state. The bill draft would have required all transactions and activities by all persons and entities within the boundaries of a reservation in the state be subject to the sales, use, and gross receipts tax provisions in the Century Code, which would be subject to future amendments by the Legislative Assembly. An exemption from tax would have been provided for tribally owned entities that solely perform a governmental function or an essential government services that directly impacts the health, welfare, or safety of the tribe and its members. Exempt entities would have been required to be specified in the agreement entered by the tribe and the state. Other tribally owned businesses, whose moneys are used in whole or in part to fund government functions or services, would not have been subject to the exemption. The tribe would have been restricted from imposing any additional direct or indirect fees on retailers, transactions, or activities subject to an agreement, with the exception of tribal employment rights office fees. The Tax Commissioner would have retained authority to collect, administer, and enforce the taxes imposed pursuant to an agreement. The tribe would have received a list of retailers located within the boundaries of the reservation and the amount of tax collected from each retailer. The tribe would have been required to protect the confidentiality of tax information received from the Tax Commissioner. Tax revenue would have been shared pursuant to the terms of the agreement and any disputes relating to the agreement would have been subject to binding arbitration. An agreement would have been required to recognize the sovereign rights of the state and the tribe. The bill draft would have authorized both the Tax Commissioner, after consulting with the Governor, and the tribe to terminate the agreement at any time, with or without cause.

The bill draft would have allowed the parties to an agreement to determine the manner in which revenue is shared. The committee reviewed potential methods for determining revenue shares, including a formula-based method. A formula-based method would evaluate each party's propensity to spend on taxable sales and distribute revenue accordingly. Use of a formula-based method simplifies administration of the tax because it removes the burden of tracking the location at which each individual item was purchased or, in the case of online sales, delivered. The state has authority to require online retailers operating above certain thresholds to collect sales tax on sales delivered to North Dakota following the Supreme Court's ruling in *South Dakota v. Wayfair, Inc.* According to the testimony, over 1,200 online retailers have registered with the state to collect sales tax. Tribal representatives indicated tax is being collected improperly on many online sales delivered to enrolled members on the reservation and the state is receiving the revenue from those sales. Committee members highlighted the benefit of entering a revenue sharing agreement as a means to redistribute online sales tax collections back to the tribe.

Tribal representatives expressed concerns regarding bill draft provisions requiring binding arbitration. According to the testimony, legal issues may arise in regard to enforcing arbitration clauses. It was noted when Florida attempted to enforce gaming compact arbitration clause against the Seminole Tribe of Florida in 2009, the case was dismissed because an arbitration clause cannot be enforced against a tribe without a sovereign immunity waiver. It also was noted tribes and states have a history of not being able to enforce arbitration clauses.

Tribal representatives also expressed concerns regarding the bill draft provisions on the tax treatment of tribally owned businesses. Tribal representatives objected to an exemption only applying to those tribally owned businesses that perform a governmental function or an essential government services that directly impact the health, welfare, or safety of the tribe and its members and which are listed in the agreement. According to the testimony, there are tribally owned businesses that do not provide an essential government function, but the revenue of the business is returned to the tribe in full for the benefit of the tribe. Tribal representatives noted these businesses are no different than the Bank of North Dakota, which is exempt from state tax. Tribal representatives expressed an interest in more flexibility in determining which tribally owned businesses would be exempt pursuant to an agreement.

Representatives of the Turtle Mountain Band of Chippewa Indians expressed concerns regarding the use of the term "reservation" in the bill draft and the impact this term would have in relation to the pockets of land located outside the boundaries of a reservation. A representative of the tribe suggested replacing the word "reservation" with "Indian country" would allow an agreement to apply to sales made on non-trust lands located outside, or adjacent to, the boundaries of a reservation. The tribe noted it has a 550-acre land purchase pending fee-to-trust conversion which would not be covered under the current language in the bill draft.

Tribal representatives expressed concerns regarding tribal sovereignty and the perception a state tax would be imposed on tribal members pursuant to an agreement. Tribal representatives requested additional language be added to the bill draft to emphasize the tribe's status as a sovereign nation and to clarify the tax imposed pursuant to an agreement would be a tribal tax. Representatives of the Tax Department noted education regarding the framework of agreements would be important to ensure tribal members realize the state is not imposing its own tax, but rather is collecting a tribal tax on the tribe's behalf. Tribal members also expressed concerns regarding the Tax Commissioner's ability to terminate an agreement, after consulting with the Governor, rather than the Governor having the authority to terminate an agreement. Tribal representatives noted the language in the bill draft waters down the relationship implied in a government-to-government agreement. Representatives of the Tax Department explained the right to cancel the agreement lies with the Tax Commissioner because the Tax Department has the sole responsibility for administering the agreement.

Alcoholic Beverages and Tobacco Products Wholesale Tax Revenue Sharing Agreements

The committee also reviewed a bill draft [19.0349.01000] to create a framework for alcoholic beverage and tobacco product wholesales tax agreements entered between the Governor and any of the five tribal nations in the state. Many of the provisions in the bill draft relating to items that must be included in a revenue sharing agreement are similar to the items in the bill draft pertaining to the framework for sales, use, and gross receipts tax agreements. The bill draft would have provided the manner in which revenues are shared under an agreement would be determined by applying a formula. A tribe's share of revenue pursuant to the formula would have been equal to the amount arrived at by multiplying the tribe's enrollment figures by the state per capita amount of either alcohol beverage wholesale taxes or tobacco products wholesale taxes collected. The per capita amount of alcoholic beverage or tobacco products wholesale taxes would have been determined by dividing the statewide collections of alcoholic beverage wholesales taxes or tobacco products wholesale taxes by the total state population, as determined by the most recent actual or estimated census data. The enrolled membership of a tribe would have been required to be certified to the state by September 30 of each year based on the tribe's enrollment office records, Bureau of Indian Affairs (BIA) records, or other records maintained by the tribe. For purposes of the formula, the enrolled membership would have consisted only of the enrolled members residing on the portion of the reservation located within the boundaries of this state. Revenues would have been deposited quarterly into the newly created tribal allocation fund.

The Tax Department provided testimony regarding the estimated amount of revenue that would be distributed to the tribes based on the allocation formula in the bill draft. It was reported approximately $8.8 million in alcoholic beverage wholesales taxes are collected statewide per year. Of that amount, roughly $300,000 would be distributed to the tribes if all five tribes entered a revenue sharing agreement. Of the $300,000, $109,000 would be distributed to the Turtle Mountain Band of Chippewa Indians, $79,000 to the Three Affiliated Tribes of the Fort Berthold Reservation, $53,000 to the Spirit Lake Tribe, and $52,000 to the Standing Rock Sioux Tribe. According to the testimony, the statewide collection amount for tobacco wholesale taxes is approximately $29 million per year. Of that amount, an estimated $934,000 would be distributed to the tribes if all five tribes entered a revenue sharing agreement. Based on that amount, distributions based on the formula would range from $165,000 to the Standing Rock Sioux Tribe to $345,000 to the Turtle Mountain Band of Chippewa Indians.

The testimony indicated the state would benefit from a revenue sharing agreement pertaining to tobacco products wholesale taxes because the state is subject to various reporting requirements under the Master Settlement Agreement. It was noted having all tobacco products subject to tax under an agreement would ease administrative difficulties encountered by the Tax Department in regard to those reporting requirements. Committee members expressed concern regarding the ability of a tribe to enter a tobacco products tax agreement without entering an alcohol beverage tax agreement and indicated provisions of the bill draft may need to be revised to require an agreement be entered for both tax types.

The committee received information from representatives of the Three Affiliated Tribes of the Fort Berthold Reservation indicating the tribe went through a lengthy process to develop an alcohol tax ordinance but temporarily suspended the ordinance as a result of concerns raised at meetings with alcoholic beverage wholesalers and retailers. The committee received a letter signed by various business owners operating within the boundaries of the reservation which encouraged committee members to support a state-tribal revenue sharing agreement pertaining to revenues from on-reservation sales of alcohol. Tribal representatives noted revenues from alcohol sales are needed to address the negative effects generated by alcohol consumption. The testimony indicated the tribe would be open to an agreement that split revenues based on population, similar to the manner in which revenues are split under motor fuel tax revenue sharing agreements.

Representatives of the Spirit Lake Tribe also expressed interest in entering a revenue sharing agreement pertaining to sales of alcohol because the tribe has some of the highest numbers of alcohol-related incidents in the state and is in need of revenues to address the negative impacts of alcohol. The committee was informed the amount of revenue generated by alcohol gross receipts tax under a sales, use, and gross receipts tax revenue sharing agreement would be larger than the amount of revenue generated under an alcoholic beverage wholesale tax sharing agreement. The committee learned a tribe could enter an agreement under the proposed framework for the taxation of alcohol at the retail level without entering an agreement for the taxation of alcohol at the wholesale level.

Conclusions

The committee acknowledged revisions may be needed on both bill drafts and encouraged tribal representatives to continue working with legislators regarding recommended revisions. The committee expressed hope proposed legislation pertaining to the enabling language for both revenue sharing agreements would be ready for introduction during the 2019 legislative session.

Property Tax Concerns

The committee also received testimony regarding the potential for property tax revenue sharing agreements. Representatives of the Spirit Lake Tribe testified regarding the application of property tax to trust land being leased to non-Indians. Tribal representatives disagreed with the application of tax to these properties. Testimony from representatives of the Tax Department indicated state law requires the county to assess leasehold interests. Tribal representatives noted the tribe would be interested in reviewing a revenue sharing agreement regarding property tax assessed within the boundaries of the reservation.

Tribal representatives also expressed concerns regarding the application of property tax to fee land in the process of being converted to trust land. According to the testimony, the tribe purchased 1,200 acres of land for approximately $1.2 million but only $1 million worth of land has been successfully converted. Because a 3-year waiting period applies when converting fee land to trust land, the tribe indicated its preference is the property tax not be applied for the remainder of the conversion period occurring after payment has been remitted for the land. The testimony indicated the tribe leases 190,000 acres to non-Native American farmers and ranchers and is considering imposing a $0.25 per acre land tax.

INDIAN EDUCATION ISSUES

Behavioral Health Concerns and K-12 Funding

According to testimony, discussions with superintendents of the 17 largest school districts in the state indicated the lack of behavioral health resources is the number one issue facing schools. The testimony indicated behavioral health issues in schools also are a pressing concern on the reservation. The testimony noted because of the increasing number of children born to parents struggling with addiction on the Turtle Mountain Reservation, teachers are struggling to meet the needs of those children as those children begin to enter the school system. According to the testimony, truancy rates are high on the reservation which has a graduation rate of 70 percent. The testimony emphasized the need for a school resource officer in light of the tribe's K-12 enrollment of nearly 2,000 students. It was noted the amount of state funding received per student on the reservation has decreased by $40 over the amount received in the previous year. Tribal representatives requested the Legislative Assembly consider increasing the weighting factor in the foundation aid formula relating to at-risk students from .025 to .1. According to the testimony, the current weighting factor provides less than $50 per at-risk student. The testimony indicated because the reduced amount of taxable property on reservations creates school funding challenges, the Legislative Assembly should consider those reservation funding challenges when it considers any changes to the school funding formula. The committee recognized schools on the reservation may be facing challenges in addition to those faced by other schools in the state.

Tribal College Workforce Development Grants

The committee received information regarding workforce development grants to tribally controlled community colleges in this state. The Legislative Assembly appropriated $500,000 in Senate Bill No. 2144 (2017) for workforce development grants from the student loan trust fund, which has since been depleted. According to the testimony, proposed legislation seeking additional funding for workforce development grants will be introduced during the 2019 legislative session.

Committee members noted tribal community colleges are an untapped resource for the state's workforce needs. Committee members recognized political subdivisions in the western part of the state have a difficult time hiring drivers to operate plows and perform other maintenance services because more competitive pay is being offered to truck drivers by the energy sector. The committee was informed tribal colleges on the Spirit Lake Reservation and the Turtle Mountain Reservation offer commercial driver's license programs and employers may want to look to tribal colleges to help fill the state's workforce needs.

TRIBAL HEALTH AND HUMAN SERVICES ISSUES

Health Care Funding Shortages

The committee received information from tribal representatives regarding health care funding needs on reservations. The committee received testimony from a representative of the Three Affiliated Tribes of the Fort Berthold Reservation indicating Indian Health Services (IHS), which funds clinics and hospitals on the reservation, is chronically underfunded and understaffed. The testimony noted IHS is funding Indian nations at 50 to 51 percent of the need, leaving the tribe responsible for the remainder of costs. According to the testimony, the Three Affiliated Tribes exhausts its funding for contracted health services by June of each year. The tribe invested in a self-funded health insurance plan and spends in excess of $20 million per year in premiums for members living on and off the reservation. The testimony emphasized the tribes are in dire need of health care and addiction treatment resources. Gaps created by insufficient addiction treatment services are being filled by law enforcement as addicted individuals fill jails.

The committee received information from a representative of the Turtle Mountain Band of Chippewa Indians. The tribe receives $17 million per year in IHS contract funds for a service population of 14,000 people. The tribe exhausts its IHS funding by June of each year and does not have access to additional funding until the following October. Access to healthy food on the reservation is limited and what is available is expensive, with a gallon of milk costing up to $7. The testimony noted 10 percent of the reservation population has diabetes.

Medicaid Reimbursement

Services provided to Medicaid-eligible American Indians by non-IHS tribal providers that have entered care coordination agreements with IHS tribal facilities are eligible for enhanced federal matching at a rate of 100 percent. According to the testimony, tribes have engaged in discussions with the Department of Human Services and individual legislators to develop legislation to allocate the dollars generated from the enhanced federal match to the tribes. Tribal representatives stressed the importance of additional revenue to fund treatment centers and address other pressing health care needs.

Child Welfare

The committee received information regarding child welfare challenges tribes are facing. The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians indicating the tribe struggles with an overburdened child welfare system. According to the testimony, child welfare social workers on the reservation have up to of 100 clients, whereas state caseloads are capped at 25 clients per social worker. The testimony indicated increased caseloads are due in part to the opioid crisis on the reservation. The committee was informed 13 children born to mothers addicted to methamphetamine were abandoned over the past 2 years.

The committee also received testimony from representatives of the Spirit Lake Tribe regarding issues related to tribal youth and social services. According to the testimony, the location of 80 children in the social service system on the reservation is unknown. The tribe noted it is in negotiations to regain tribal control of social services on the reservation.

Housing and Unemployment

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians regarding housing shortages and unemployment. The testimony indicated nearly all the units in the tribe's housing authority are occupied and 112 families are on a waiting list for housing. According to the testimony, most vacant units are unusable, due in part to the cleaning required for units previously occupied by tenants evicted for issues related to methamphetamine. New housing is difficult to build on the reservation because banks generally will not issue loans for new home construction due to low property valuations on the reservation. The testimony indicated 1,800 families on the reservation use the low-income home energy assistance program, which is under threat of being cut at the federal level. The unemployment rate on the reservation is 70 percent but the tribe noted it hopes to decrease that rate when a manufacturing plant is opened on the reservation.

INFRASTRUCTURE AND LAW ENFORCEMENT ISSUES

Infrastructure Needs

The committee received information regarding various tribes' infrastructure needs and challenges. The committee received testimony from representatives of the Three Affiliated Tribes of the Fort Berthold Reservation indicating the reservation has 160 to 200 miles of road that needs paving to support oil and gas development. The cost to repair a

1.25 mile roadway is $4 million. The federal government budgets $1 million per year for roads on the Fort Berthold Reservation. The tribe has spent $50 million to $60 million on roads in the past 2 years. The need for road funding also was highlighted by representatives of the Spirit Lake Tribe, who noted the need for funding has been exacerbated in light of recent decreases in gaming revenue.

The committee received information from representatives of the Turtle Mountain Band of Chippewa Indians regarding infrastructure concerns. The committee was informed the tribe's lack of access to railroads and highways is one of the reasons the reservation has difficulty attracting industry and manufacturing. Existing reservation roads also are in need of repair, including Jack Rabbit Road, which accommodates school buses, ambulances, border patrol staff, and working professionals. Tribal representatives also expressed the need for sewer system and other public utility improvements.

The committee received testimony emphasizing the importance of investing in government and business infrastructure on reservations to avoid perpetuating multigenerational poverty. Committee members noted federal funding may be available to assist tribal governments in addressing infrastructure needs. Committee members also discussed the benefits that may result from tribal cities choosing to becoming incorporated under North Dakota Law, including the establishment of a tax base, a law enforcement office, and a fire department.

Law Enforcement Cooperation and Licensure

The committee received information regarding law enforcement issues facing the tribes. The committee received testimony from a representative of the Spirit Lake Tribe indicating only six BIA officers patrol about 400,000 square acres. Tribal representatives noted the tribe would benefit from entering a memorandum of understanding with county and state officials for joint law enforcement to provide better border control and address illegal immigrant concerns.

The committee also received testimony from a representative of the Three Affiliated Tribes of the Fort Berthold Reservation. The Mandan, Hidatsa, and Arikara (MHA) Nation contracts for law enforcement pursuant to Public Law 93-638. Public Law 93-638 allows a tribe to contract with the federal government to operate programs serving their tribal members. The MHA Nation also created a drug enforcement agency, outside of Public Law 93-638, to address violence and drug use arising from oil and gas development. The MHA Nation's drug enforcement agency made nearly 600 drug related arrests over the past 2 years, which required cooperation with other state, county, and federal agencies through memorandums of understanding and agreements. The MHA Nation entered a model joint law enforcement agreement with McLean County, with additional counties considering following suit. According to the testimony, law enforcement agreements work well as long as jurisdictional details are clearly defined. Tribal representatives encouraged the Legislative Assembly to take a stronger and more formal stance in endorsing and enhancing joint law enforcement agreements to promote the safety of all citizens.

The committee received testimony from a representative of the Turtle Mountain Band of Chippewa Indians indicating the federal government does not provide sufficient funds for a police force on the reservation, and the crime rate on the reservation is high. According to the testimony, non-Indians have been entering the reservation to sell drugs; however, the state's attorney in Rolette County has not been prosecuting those arrested for selling drugs. It was noted the reservation has two judges to serve the entire reservation and one probation officer for 2,200 probationers.

The committee received testimony from representatives of BIA and the North Dakota Highway Patrol regarding potential clarifications to statutory provisions pertaining to law enforcement, which may be pursued during the 2019 legislative session. The definition of a "federal agent" in Section 29-06-05.2 does not contain a reference to employees of BIA law enforcement. As a result, BIA law enforcement officers are excluded from the immunity and liability insurance coverage applied to other peace officers in this state when rendering assistance to another peace officer upon request or in an emergency situation. The testimony indicated proposed legislation will seek to add a reference to BIA law enforcement officers to allow officers on either side of the line between tribal and state lands to cross over to render assistance to another officer in need while retaining liability protection. The committee expressed support for efforts to encourage mutual aid between counties, the state, and the tribe, especially in areas impacting public safety. Tribal representatives noted it would be important to discuss this issue with all five tribes to clarify neither of the parties rendering assistance would be relinquishing jurisdiction over their lands.

The committee also was informed proposed legislation may be sought to clarify Section 12-63-02.2, regarding recognition by the Peace Officer Standards and Training Board of tribal police officers as peace officers or part-time peace officers. According to the testimony, some tribal police officers require more extensive training than state peace officers. The testimony indicated the curriculum for peace officers and tribal police officers is being compared to determine if the requirements for a tribal police officer to receive licensure as a peace officer are unnecessarily complex.

OTHER ISSUES AFFECTING TRIBES

Voter Identification Requirements

The committee received testimony from a representative of the Secretary of State's office regarding a recent United States Supreme Court ruling pertaining to voter identification requirements. According to the testimony, a voter must provide identification verifying the voter's name, date of birth, and residential address when casting a ballot at the polling place or voting by mail. A residential address may not be a post office box. The committee was informed some tribal identification documents do not contain a residential address. The testimony indicated an individual seeking proof of that individual's residential address can contact the county 911 coordinator for documentation to verify the residential address. The documentation may be used to supplement tribal identification documents that do not contain a residential address. The Secretary of State's office sent a memorandum regarding voter identification requirements to all tribal leaders in the state and published the information in all newspapers in the state in each of the 3 weeks preceding the November election.

Unmanned Aircraft Systems

The committee received information from a representative of the University of North Dakota regarding regulations for the operation of unmanned aircraft systems (UAS). The representatives of the UAS program were seeking assistance and input from state, local, and tribal governments in the development of UAS procedures and regulations. The testimony noted a state-level framework of regulations could benefit tribal and local governments. The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians regarding the use of drone technology for youth and elder initiatives. The tribe has used drones to map buildings and tribal assets and find artifacts and burial sites previously believed to have been lost.

Signage Marking Tribal Lands

The committee received testimony from a representative of the Spirit Lake Tribe regarding concerns pertaining to signage on the reservation and surrounding area. The testimony indicated a sign that designates the reservation boundary continues to be moved back without explanation. According to the testimony, tribal representatives met with representatives of the Department of Transportation regarding the location of the sign but were told the sign is for directional purposes rather than a sign to identify reservation boundaries. Tribal representatives expressed concern tourists' understanding of reservation boundary lines impact the hunting and fishing licenses tourists obtain. Tribal representatives indicated a desire to work with state agencies to have the sign moved to a mutually agreeable location that more accurately reflects the boundaries of the reservation according to treaty.

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 procedures governing the operation of other Legislative Management interim committees. This section originally created the Garrison Diversion Overview Committee in 1981 but was amended in 2009 to create the Water-Related Topics Overview Committee. The name was changed to its current form 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 may meet with the State Water Commission (SWC) and must:

1. Work collaboratively with the SWC;
2. Report on the committee's project prioritization process;
3. Provide updates on allocated program expenditures; and
4. Report on the fund balances of projects, grants, and contracts.

In addition to its statutory obligations, the committee was tasked with receiving multiple reports concerning water projects during the 2017-18 interim. Section 8 of House Bill No. 1020 (2017) required the committee to receive quarterly progress reports from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project (RRVWSP). Sections 11 and 12 of House Bill No. 1029 (2017) required the committee to receive a report from the Industrial Commission by June 1, 2018, on the results of the study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the Western Area Water Supply (WAWS) Authority and the timeline to complete the lease or sale. Section 29 of Senate Bill No. 2014 (2017) required the committee to receive a report from the Industrial Commission by September 30, 2018, regarding the results and recommendations of the study of the feasibility of and appropriate jurisdiction for regulation of sediment studies and dredging operations from the beds of reservoirs. Section 9 of Senate Bill No. 2020 (2017) required the committee to receive a report from the Bank of North Dakota on the terms and conditions of the WAWS Authority consolidation loan upon its completion.

The committee also was assigned two studies, although one study was to be performed by the State Engineer. Section 14 of House Bill No. 1020 (2017) required a study of issues related to the state's development of a statewide flood hazard risk management framework by granting authority to the State Engineer to perform a study and proof of concept demonstration to implement statewide flood risk management capabilities for assessing, managing, and reducing property-specific flood risk. Section 26 of House Bill No. 1020 (2017) required a study of the oil and gas industry's use of industrial water. The study was required to include the recapture of water used in fracking, the recycling or water used in fracking and other oil and gas activities, fracking methods that do not require the use of water, and taxes or fees other states charge for water used in the oil and gas industry.

Committee members were Representatives Jim Schmidt (Chairman), Dick Anderson, Tracy Boe, Chuck Damschen, Michael Howe, Bob Martinson, Alisa Mitskog, Jon O. Nelson, Mark Sanford, Roscoe Streyle, and Denton Zubke and Senators Jonathan Casper, Curt Kreun, Gary A. Lee, Larry J. Robinson, Donald Schaible, and Ronald Sorvaag.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

GARRISON DIVERSION CONSERVANCY DISTRICT AND RED RIVER VALLEY WATER SUPPLY PROJECT

Background

Research suggests a strong possibility of a drought in the Red River Valley area within the next 5 decades. As the population in that area grows, the impact of such a drought would be even greater than the impact of droughts in prior years. The Red River Valley Water Supply Project was authorized by the Dakota Water Resources Act of 2000 to address this concern and provide a solution to the water supply and quality problems in the Red River Basin. That legislation also called for $200 million of federal appropriations for the project. The Garrison Diversion Conservancy District, on behalf

of the state, and the United States Bureau of Reclamation, on behalf of the federal government, executed a memorandum of understanding to begin studying these issues in 2000. After years of work, the United States Bureau of Reclamation issued a draft environmental impact statement for the project in December 2005. The draft included analyses of eight alternative plans for accomplishing the objectives of the project. After additional information was obtained, a revised draft environmental impact statement was released in January 2007. In the revised draft, both parties identified the Garrison Diversion Unit import to the Sheyenne River as the preferred alternative for bringing a reliable supply of quality drinking water to the Red River Valley area. This alternative includes the installation of a pipeline from Washburn to the Red River Valley area through the Sheyenne River north of Lake Ashtabula, which will act as a regulating reservoir. From there, water will be released into the Sheyenne River and flow into the Red River supplying water systems in the Red River Valley with a reliable supply of drinking water. This plan will provide flexibility for future expansion so water can be conducted to residents in central North Dakota as well. In December 2007 the United States Bureau of Reclamation issued the final environmental impact statement for the project. It includes responses to public comments received on the prior iterations of the document, a final biological assessment prepared in compliance with the federal 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 United States Bureau of Reclamation each identified the Garrison Diversion Unit import to the Sheyenne River alternative as the preferred alternative. However, the federal government has not approved the project. As a result, it is now a state and local project, and the Garrison Diversion Conservancy District is the lead state entity on the project.

Testimony and Committee Deliberation

The committee received testimony regarding several aspects of the Garrison Diversion and RRVWSP. According to the testimony, the necessary permits and approvals for the projects are on track. The committee was informed the RRVWSP will require 20 cubic feet of water per second to flow through the McClusky Canal, and the United States Department of the Interior issued a "finding of no significant impact" for that requirement after conducting the department's final environmental assessment. It was noted permit applications for the project have been submitted to the Army Corps of Engineers, State Department of Health, and SWC. Representatives of the Garrison Diversion Conservancy District reported the preliminary design report and the engineering for the RRVWSP were completed in 2018 and property acquisitions for the project are continuing, and the next step for the project is to obtain a water service contract and special use permit from the United States Bureau of Reclamation.

At multiple meetings, the committee was informed the Garrison Diversion Authority has not finished its work on a financial model to calculate the cost of water for residents in communities that sign up to obtain water through the RRVWSP. It was noted some communities that signed up for the RRVWSP may withdraw from the project once the cost is determined. The committee expressed concerns that infrastructure installed for the project may go to waste if the cost is too high, communities withdraw from the project, and the project is not completed.

Early in the interim, the committee was informed the Mayor of Fargo disagreed with the committee's position that the city must contribute a cost-share for some of the state funds appropriated to the project. According to the testimony, it was the mayor's position the state funding set out in House Bill No. 1020 (2017) for the RRVWSP is a grant with no cost-share requirement. However, officials from the Garrison Diversion Conservancy District informed the committee the district prepared its baseline financial model using a 20 percent local cost-share.

Representatives of the Garrison Diversion Conservancy District testified the district will seek a $150 million appropriation during the next legislative session. The committee was informed, as of August 2018, approximately $20 million has been spent on the RRVWSP.

The committee was informed changing plans for the Garrison Diversion to use the Sheyenne River rather than the McClusky Canal would require an additional $170 million. However, that change is no longer under consideration.

The committee also received testimony indicating Manitoba officials expressed concerns over the potential transfer of biota from North Dakota to Manitoba resulting from the RRVWSP. The testimony noted discussions with Manitoba officials on this issue are proceeding in a way that indicates the concerns will be addressed sufficiently.

COLLABORATION WITH THE STATE WATER COMMISSION, PROGRAM EXPENDITURES, AND REPORTS ON THE FUND BALANCES OF PROJECTS, GRANTS, AND CONTRACTS

Background

The State Water Commission was created in response to the drought of the 1930s and was charged with developing irrigation in the state. From 1937 to 1981, the Legislative Assembly funded the commission on a biennium-to-biennium basis with approximately $500,000 to $2,000,000 appropriated per biennium. The duties of the commission changed with creation of the resources trust fund in 1981. When the resources trust fund was created, the proceeds of the fund were dedicated to financing the Southwest Pipeline Project, which was the first state water project. During this period,

the scope of projects increased dramatically as the Southwest Pipeline Project was a $100 million project. The State Water Commission now serves many functions, including the approval and funding of water projects throughout the state.

Testimony and Committee Deliberation

The committee met twice with the SWC during the interim, once in October 2017 and once in September 2018. During the joint meetings, the committee members and commissioners discussed the importance of continuing collaboration and communication to ensure state funds are allocated appropriately. Additionally, the committee received updates on the commission's work from commissioners or SWC employees at each committee meeting. The updates included testimony on the progress of the commission's economic and life cycle analysis models required under House Bill No. 1374 (2017), the status of approved water projects, fund balances, and the creation and ongoing work of commission subcommittees. The committee also was informed of the commission's reviews of projects that are at least 4 years old. Committee members encouraged the commission to expedite the reviews and reallocate money obligated in stalled projects to projects ready to begin. Committee members also encouraged the commission to expedite reviews of new project applications and discussed the problems associated with delayed approvals, especially considering the short construction season in North Dakota. There was significant committee discussion regarding the need to put money to use for projects that make sense for the respective basins. This was a continuation of the discussion that occurred during the 2015-17 biennium regarding basin-wide planning for water projects.

The committee received monthly SWC project summaries throughout the interim. The summaries provided details on the SWC's budget, expenditures, and unobligated funds, as well as information about each ongoing project approved by the commission. The committee also received periodic updates on the resources trust fund, including comparisons of its estimated revenues and actual collections. The commission was informed the fund revenues may be greater than anticipated. The committee concluded the SWC has authority under Section 3 of House Bill No. 1020 (2017) to allocate the additional revenue from the resources trust fund to water projects if the commission obtains Budget Section approval to do so.

FARGO FLOOD CONTROL AND FM AREA DIVERSION PROJECT

Background

In 2009 and 2011, the Legislative Assembly provided $45 million and $30 million respectively for Fargo flood control. In 2013 the Legislative Assembly provided $100 million for the Fargo flood control project to provide a total of $175 million. In addition, the 2013 Legislative Assembly included legislative intent that the state provide up to $450 million for the project, with the remaining $275 million to be provided over the next 4 bienniums. The 2013 Legislative Assembly also limited the use of the funding designated for the Fargo flood control levee and dike protection until the Fargo flood control project receives federal authorization, a project partnership agreement is executed, a federal appropriation is provided for project construction, and the budget for the Fargo flood control project is approved by the SWC. The 2015 Legislative Assembly provided an additional $69 million for the Fargo flood control project and $60 million for Fargo interior flood control projects, of which $30 million is from the state disaster relief fund, to provide a total of $304 million for flood protection in Fargo. The Legislative Assembly also included legislative intent to provide up to $570 million for Fargo flood control projects, an increase of $120 million. The $120 million is to be used for Fargo interior flood control projects and requires 50 percent matching funds from the Fargo Flood Authority. These funds may be expended only for Fargo interior flood control projects, including levees and dikes, until a federal appropriation is provided for construction of the Fargo flood control project, at which time it may be used for a federally authorized Fargo flood control project. The Legislative Assembly also included legislative intent that funding for the Fargo flood control project will end June 30, 2021, if a federal appropriation has not been provided by that time. The 2015 Legislative Assembly provided legislative intent that the remaining funding be made available in equal installments over the next 4 bienniums. Money from the Cass County sales tax has been used for levy work in small communities and for retention.

Testimony and Committee Deliberation

The Fargo flood control projects were discussed extensively throughout the interim, and one meeting was held in Fargo to give the committee members the opportunity to tour the projects. The committee was informed the anticipated cost of the project has increased from $1.8 billion to $2.2 billion, and one-half of that sum is anticipated to come from federal and state funds, including $43 million from Minnesota which is in addition to the $570 million from North Dakota. The remaining one-half of the funding is anticipated to be derived from local sources, including a Fargo city sales tax.

In 2017, the Minnesota Department of Natural Resources indicated it would not approve a necessary permit for the Fargo flood control projects. In September 2017, a federal judge issued a preliminary injunction halting most work on the project, including land acquisition, design, procurement, cultural mitigation studies, and construction. The governors of North Dakota and Minnesota created a task force to develop a mutually acceptable plan, known as Plan B, for the project. A technical advisory group and policy group also were formed to work on the development of the plan. In March 2018, the FM Area Diversion Authority submitted Plan B to the Minnesota Department of Natural Resources for a permit.

The committee was informed Plan B will increase the level of water that will flow through the river channel in Fargo during a flood from 35 to 37 feet, shift the western tie-back levee south and west from Horace, move the southern embankment north, and reduce negative impacts to Minnesota, among other changes. Representatives of the FM Area Diversion Authority testified Plan B will reduce negative impacts to Richland and Wilkin Counties, but several residents and representatives of those areas testified the two counties still will bear a disproportionate burden under the plan for the protection of Fargo residents who live in the flood zone. The Minnesota Department of Natural Resources and the Army Corps of Engineers each released Supplemental Environmental Impact Statements on the project changes. The committee was informed the Minnesota Department of Natural Resources permitting decision is anticipated in November 2018.

Portions of the diversion project are being implemented by a public-private partnership (P3). According to the testimony, the P3 agreement between public entities involved in the project and the private developer chosen to participate in the project allocates responsibilities and risks of the design, construction, financing, operation, and maintenance of the project. It was noted the private developer will secure private financing and operate and maintain the diversion channel. The testimony indicated the P3 will be more efficient and cost-effective than a purely public undertaking.

REPORTS

Red River Valley Water Supply Project

As required by Section 8 of House Bill No. 1020 (2017), the committee received quarterly reports from the Garrison Diversion Conservancy District on the RRVWSP. The reports were given in October 2017, February 2018, June 2018, and September 2018. The reports provided information on the project's status, budget, and plans, and anticipated requests for state funds.

Western Area Water Supply Authority's Industrial Water Supply Assets

The committee received several reports on the status of the Industrial Commission's study of the feasibility and desirability of the sale or lease of the industrial water supply assets of WAWS Authority pursuant to Sections 11 and 12 of House Bill No. 1029 (2017). In July 2017, the committee was informed the Industrial Commission established an advisory committee to oversee the study, and the advisory committee issued a request for proposals to conduct the study. In October 2017, the committee was informed Stantec was awarded the study contract and would work with Houston Engineering, Inc., on the study. The committee received an update on the study status in February 2018, and received the final study report in June 2018. The study concluded few of the industrial water supply assets were owned wholly by the WAWS Authority, and the value of the assets depended heavily on having long-term water supply contracts requiring use of the assets. The committee was informed it is unlikely any private entity would be willing to purchase the assets without the contracts. According to the final report, "the most realistic and financially feasible option is to sell available water supply on an interruptible basis through a structured offering that includes a combination of upfront and fixed payments, and a discounted rate for water sales."

Regulation of Sediment Studies and Dredging Operations from Beds of Reservoirs

As required under Section 29 of Senate Bill No. 2014 (2017), in June 2018, the committee received a report on the study of the feasibility of and appropriate jurisdiction for regulation of sedimentation studies and dredging operations from the beds of reservoirs. No executive agency in North Dakota regulates this specific activity. The study was conducted by the Industrial Commission in consultation with the Game and Fish Department, State Department of Health, and SWC. The commission was informed the administrative rules and regulations of several Midwestern states regarding lakebed sedimentation studies and dredging operations were reviewed for the study, and the study participants recommended North Dakota follow a regulatory scheme similar to South Dakota's. The commission was informed reservoir beds are treated as minerals in South Dakota, and South Dakota's Department of Environment and Natural Resources coordinates the permitting of lake dredging activities. The commission also was informed annual permits costing $100 are required for any dredged sediment planned for sale, and permittees must provide annual reports. According to the report, South Dakota has not issued any permits under these regulations since the regulations were adopted in 1996. The study report included additional best practices culled from other states for consideration.

Western Area Water Supply Authority Consolidation Loan

House Bill No. 1020 (2017) contained provisions to restructure $88 million of debt owed by the WAWS Authority. The need to restructure the debt arose, in part, because of the decrease in WAWS's industrial water sales in recent years. The committee was informed the decrease is due to the decline in oil and gas industry activity and the inability of WAWS to compete on price with other water suppliers in the area.

The plan to restructure the WAWS Authority's debt assumes WAWS revenues would include $12 million in industrial water sales in 2017 and $14 million in industrial water sales per year for the period of 2018 through 2022. The Bank of North Dakota planned to restructure and consolidate the debt so the assumed revenues would be sufficient to repay the

debt over a 20-year term. In July 2017, the committee was informed the Bank had issued a request for proposal for a vendor to study the issue.

Representatives of the Bank of North Dakota provided an update to the committee in August 2018 and described the various options for restructuring the debt which the study vendor had examined. The committee was informed bonding the WAWS Authority debt would be difficult or impossible at that time, although preparations for future bonding the debt would continue. The committee also was informed the most feasible debt structure model was a hybrid between variable rate debt held by the Bank and bonding long-term debt as accepted by the market. According to the testimony, WAWS was $1.4 million ahead in its repayments of the debt as of August 2018.

Souris River Basin Flood Control

The committee received reports on the status of the Souris River Basin flood control projects throughout the interim and held a meeting in Minot to allow the members to tour the projects. The City of Minot and the surrounding towns and rural areas are impacted by the projects. The committee received testimony on the status of flood protection in rural areas around Minot, including the rural structure acquisition, relocation, or ring dike (StARR) program, which helps rural landowners pay for flood protection efforts. According to the testimony, approximately one-half of the $12 million authorized for the StARR program had been used by August 2018.

The committee was informed Phases 1 through 3 of the Minot flood control project have been completed or are under construction, and the contractors are focused on acquiring properties for and designing Phases 4 and 5. According to the testimony, some rural residents in the basin are opposed to the project because it causes periodic flooding of their land, much of which is used for agricultural purposes. The testimony indicated the available funding for the project was sufficient to advance Phase 4 to a 50 percent design level, but an additional $8 million is needed to match federal funds for property acquisitions to proceed to Phase 5. The testimony indicated $20 million in project savings was returned to the SWC but was reallocated to property acquisitions and other parts of the project. The total project will require the acquisition of approximately 650 homes, businesses, and lots, and will result in reducing the floodplain so approximately 60 percent of the residents currently in the floodplain will no longer be in the floodplain.

Southwest Pipeline Project

The committee received testimony regarding the status of the Southwest Pipeline Project, which is owned by the state and operated and maintained by the Southwest Water Authority. According to the report, the project had received a total of $356.8 million in funding, including $210.4 million in state funds and $24 million in state bonds, as of August 2017. The project repaid more than $56 million to the state as of September 2017, and the project is exceeding its cost-share requirements. The Southwest Water Authority receives a mill levy from each of the 12 counties served by the project. The report noted the Southwest Water Authority had a $13.8 million funding shortage for the 2015-17 biennium and requested $84 million in state funds for the 2017-19 biennium.

Northwest Area Water Supply Project

The committee received updates on the Northwest Area Water Supply (NAWS) Project, which will provide water to approximately 81,000 people in Burke, Ward, Renville, Bottineau, and McHenry Counties. In 2002, Manitoba filed a lawsuit to halt construction of the NAWS Project due to environmental concerns. In 2005, a court ordered the United States Bureau of Reclamation to conduct additional environmental studies of the project, and in 2009, a final Environmental Impact Statement and Record of Decision were issued by the bureau. However, Missouri initiated a lawsuit claiming the bureau's conclusions and decision were insufficient to fully analyze the environmental impacts of the project. The court ordered the bureau to conduct further studies, and a new decision was issued in 2015. In August 2017, the court ruled in favor of the bureau and North Dakota, and construction on the NAWS Project was allowed to continue pending an appeal by Manitoba and Missouri. The committee discussed concerns about the condition of some of the project's physical assets that lay dormant through the litigation.

International Issues Related to the Souris River

The committee received testimony on the operations of the International Souris River Board. The board is composed of nine Canadian members and nine American members representing government agencies and local entities. The board established an International Souris River Study Board to evaluate and make recommendations regarding the Operating Plan for flood and nonflood operations which is contained in an annex of the 1989 International Agreement between the Government of Canada and the Government of the United States of America for Water Supply and Flood Control in the Souris River Basin. The committee received testimony the study is expected to cost $1.8 million and be completed by February 2020.

The committee also received testimony regarding the regulation of the elevation of Lake Darling, which is affected by the 1989 agreement. Lake Darling, which was created to provide a water supply for protected wetlands below a dam, also provides flood protection from spring runoff for Minot. The committee was informed the 1989 agreement allocates

the water in the lake between the United States and Canada and requires the United States Fish and Wildlife Service and the Army Corps of Engineers to operate the dam to ensure the water rights under the agreement are satisfied.

The committee also received testimony regarding the activities of the Assiniboine River Basin Initiative. The Assiniboine River Basin encompasses the Qu-Appelle, Souris, and Assiniboine River watersheds, which extend over Saskatchewan, Manitoba, and North Dakota. The committee was informed the Assiniboine River Basin Initiative brings stakeholders together to develop basin-wide watershed management plans.

Alternative Water Project Funding

The commission received testimony regarding water project funding available from sources other than the SWC. The committee received testimony on flood impact grants from the Department of Commerce, which received $5 million of federal funds for the grants for the 2017-19 biennium. The committee also received testimony on water project funding available from the Public Finance Authority, State Department of Health, Bank of North Dakota, and United States Department of Agriculture's North Dakota Office for Rural Development.

Waters of the United States Regulations

The committee received testimony regarding the background and status of litigation over federal regulations concerning the definition of "waters of the United States" (WOTUS) as used in the Clean Water Act. In 2015, the United States Environmental Protection Agency (EPA) and Army Corps of Engineers jointly issued regulations regarding the definition of WOTUS. Several states filed suit seeking to enjoin the regulations as an overreach of federal authority. Eventually, a nationwide injunction was granted, and the pre-2015 definition was restored. After additional litigation over jurisdictional matters, North Dakota's lawsuit was remanded to district court for litigation on the merits of the claims. In the meantime, President Trump issued an executive order directing the EPA and the Department of the Army to rescind or revise the 2015 regulations. In January 2018, the EPA and Department of the Army issued final regulations stating the WOTUS regulation would become effective in 2020, and indicated the intent is to continue using the pre-2015 regulation while working on the review.

Cloud Seeding

The committee received testimony regarding the State Atmospheric Resource Board, cloud seeding, and county weather modification authorities. The committee was informed the State Atmospheric Resource Board's cloud modification project aims to suppress hail and enhance rainfall. According to the testimony, two-thirds of the project's funds are from counties while one-third of the funds are from the state. The committee recognized significant controversy over the practice of cloud seeding and strong disagreement regarding its benefits and detriments.

Lake Sakakawea and Lake Audubon

The committee received testimony regarding the Army Corps of Engineers management of water levels in Lake Sakakawea and Lake Audubon. The committee was informed lowering the level of water in Lake Audubon would jeopardize the water supply to the McClusky Canal and negatively impact the Garrison Diversion project. The committee also was informed a drought contingency plan does not exist in the water control plan for the two lakes, which creates a risk of dam failure due to underseepage at the dam foundation.

Railroad Right-of-Way Crossing Fees

The committee received testimony stating railroads are charging residents high fees to allow rural water supply lines to cross under railways. According to the testimony, different railroads impose different fees for the crossings, and the fees may exceed $5,000 for a water supply line to one residence. The testimony indicated Minnesota and Wisconsin cap railroad crossing fees at $1,250 and $500, respectively. The committee discussed the difficulty of residents and water suppliers to afford the fees, and encouraged representatives of the railroads to work to resolve the issue. However, the committee was informed in September 2018 the problem had not been resolved.

STUDIES

Statewide Flood Hazard Risk Management Study

Section 14 of House Bill No. 1020 (2017) required a study of issues related to the state's development of a statewide flood hazard risk management framework by granting authority to the State Engineer to perform a study and proof of concept demonstration to implement statewide flood risk management capabilities for assessing, managing, and reducing property-specific flood risk. The legislative intent for the study was to determine whether residents who live in floodplains may be able to reduce or eliminate the need for costly flood insurance. The committee received testimony the State of North Carolina used a combination of light detection and ranging (LiDAR) and geographic information system (GIS) data to identify which homes in that state are sufficiently elevated to be considered above floodplains. The committee was informed, based on the mapping data, a homeowner can obtain elevation certifications to demonstrate to the federal government the homeowner does not need flood insurance. According to the testimony, LiDAR and

GIS data are not available to all North Dakota residents. As a result, residents who are deemed to reside in floodplains must pay about $1,500 to obtain an elevation certification or obtain flood insurance.

In August 2018, the committee was informed the unresponsiveness of public officials in North Carolina to inquiries by the State Engineer delayed the study. The committee was informed attorneys in both states were working on a partnership structure to carry out the study, but it had not progressed beyond that stage.

Conclusion

The committee makes no recommendation regarding the State Engineer's study of the state's development of a statewide flood hazard risk management framework.

INDUSTRIAL WATER USAGE STUDY

Background

Section 26 of House Bill No. 1020 (2017) required a study of the oil and gas industry's use of industrial water. The study was required to include the recapture of water used in fracking, the recycling of water used in fracking and other oil and gas activities, fracking methods which do not require the use of water, and taxes or fees other states charge for water used in the oil and gas industry. Industrial water use in the Bakken area has increased significantly during North Dakota's recent oil boom. This increase is due in large part to the process of fracturing or "fracking," which is common in the Bakken area, generally utilizes large volumes of water that then must be captured, disposed of, or recycled. The committee has studied industrial water costs, infrastructure, and permitting in recent interim periods, but this study was intended to examine a broader range of issues.

Testimony and Committee Deliberations

The committee received testimony regarding technologies for treating water previously used for industrial purposes. The committee was informed of the technological, logistical, and economic challenges of treating water used by the oil and gas industry in the Bakken area. A university researcher testified more water is used per frack in the Bakken area now than in the past because the oil and gas industry in the Bakken area has reduced the volume of chemicals used per frack. According to the testimony, approximately 24 billion gallons of water were used for irrigation, fracking, industry, and municipal and rural water supply in the Bakken area in 2014, and approximately 10 billion gallons of that amount were used for fracking. The committee was informed more surface water than groundwater was used for fracking, although the opposite was true before 2012. Despite the large volume of water used for fracking, testimony indicated the oil and gas industry generally had a limited impact on groundwater and surface water resources in the state. However, studies presented to the committee indicated the 22 percent increase in precipitation the state received in recent years offset the industry's total impact, and the state's water resources may be affected more significantly by the oil and gas industry when precipitation levels return to normal. According to the testimony, development of alternative fracking fluids, including acid-based fluids, energized fluids, foams, emulsions, and mixture-based fluids, is ongoing, perhaps because of the difficulty of recycling or reusing water that has been used for fracking in the Bakken area. The committee was informed recycling fracking waste water is more difficult in the Bakken area than other oil-producing regions in Texas, Colorado, and Pennsylvania due to several factors.

Other research presented to the committee described a demonstration project to evaluate a brine treatment test bed and carbon capture and storage options. Testimony indicated the project will help determine whether and how brine produced by the oil and gas industry may be treated and reused for water supply and will evaluate technologies for the recovery or creation of materials such as lithium, hydrochloric acid, and sodium hydroxide from industrial brines. According to research presented to the committee, however, there are significant challenges to the treatment of water from the Bakken area, including the high level of salinity, potential for naturally occurring radioactive material in the treatment concentrate streams, logistical challenges during cold winters, and the inexpensive and convenient current methods of brine disposal.

Conclusion

The committee makes no recommendation regarding its study of industrial water usage in the state.

WORKERS' COMPENSATION REVIEW COMMITTEE

North Dakota Century Code 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. Section 54-35-22 provides for a six-member committee composed 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 statutory directive to review workers' compensation claims, the committee has been assigned five other statutory directives:

- Section 65-02-30 requires the committee select up to four elements to be included in the quadrennial performance evaluation of Workforce Safety and Insurance (WSI);
- Section 65-02-30 requires the committee to receive the performance evaluation report and review any actions taken resulting from the performance evaluation report;
- Section 65-03-05 requires WSI to report biennially regarding compiled data relating to safety grants issued under Chapter 65-03;
- Section 65-05.1-06.3 directs WSI include in an annual report to the committee status reports on WSI's current rehabilitation services pilot programs; and
- Section 65-06.2-09 requires WSI to report on recommendations based on the biennial safety review of Roughrider Industries work programs and the biennial performance review of the program of modified workers' compensation coverage by WSI.

Committee members were Senators Jonathan Casper (Chairman), Randall A. Burckhard, and Erin Oban and Representatives Joshua A. Boschee, George Keiser, and Dan Ruby.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

CLAIM REVIEW

General Background

Workers' compensation laws in North Dakota are found primarily in North Dakota Century Code Title 65. The administrative rules adopted by WSI are found in North Dakota Administrative Code Title 92. Section 12 of Article X 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.

Section 54-35-22 established the Workers' Compensation Review 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 Section 54-35-22 and legislative recommendations made:

Interim	Claims Reviewed	Bills Recommended
2005-06	11	3
2007-08	15	9
2009-10	4	7
2011-12	2	4
2013-14	1	2
2015-16	7	1

Claims Review Procedure

Based on the protocol and application packet used during the 2015-16 interim, the committee established a procedure and protocol for conducting its charge of reviewing claims. The revised application packet included a cover letter explaining the application process and eligibility requirements, a copy of Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

To notify the public of the committee's activities and to solicit injured employees to submit claims for review, the committee published the application packet on the legislative branch website and mailed a copy of the application packet to injured employees who recently utilized the claim review services of WSI's Decision Review Office. The committee adopted the following procedure, which was used during previous interims to determine eligibility for a claim review and to prepare the injured employee for the committee meeting at which the claim is reviewed:

1. An injured employee submits to the Legislative Council office a complete "Release of Information and Authorization" form. In addition, the applicant submits a "Review Issue Summary" form on which the applicant may summarize the issues the applicant wants the committee to review.
2. Upon receipt of a completed application, the Legislative Council staff forwards a copy of the application information to an assigned ombudsman at WSI, who reviews the application to make a recommendation regarding whether:
    a. The applicant is 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 are exhausted or the period for appeal had expired.
3. Following this review, the ombudsman contacts the Legislative Council staff to provide a recommendation regarding eligibility for review. Upon receipt of this recommendation, the Legislative Council staff contacts the committee chairman to make a determination of eligibility.
4. Upon a determination of eligibility, the Legislative Council staff contacts the injured employee and the ombudsman to begin the case preparation.
5. Regardless of whether the injured employee accepts the assistance of the ombudsman, the ombudsman prepares a summary of the case to present at the committee meeting.
6. At the injured employee's discretion, the ombudsman assists the applicant in organizing the issues for review.
7. The ombudsman prepares a case review packet and includes the packet in a binder of information prepared for each committee member, Legislative Council staff, and the WSI representative. Although the binders are distributed at each committee meeting, the binders remained the property of WSI and are returned at the completion of each committee meeting.
8. Before each committee meeting at which a claim was to be reviewed, the ombudsman meets with Legislative Council staff to review the case summary and workers' compensation issues to be raised.
9. Upon receipt of these workers' compensation issues, Legislative Council staff notifies a WSI representative of the identity of the injured employee who will be appearing before the committee for a case review, and, as appropriate, the basic issues to be raised by the injured employee.

The committee established the following committee meeting procedure, which was followed for the claims reviewed by the committee:

1. Committee members have 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. An ombudsman from WSI summarizes the injured employee's case.
3. The injured employee presents the workers' compensation issues brought forward for review. At the discretion of the injured employee, the issues are presented by the injured employee, a representative of the injured employee, or both.
4. One or more representatives of WSI comment on the workers' compensation issues raised.
5. Committee members have an opportunity to discuss the issues raised.

Each claim reviewed is allocated a block of time during which the committee conducts the initial claim review. Following the initial review, the committee retains the authority to continue to discuss issues raised as part of the review. The committee may request additional information on specific issues and may review this information at a future meeting. During a committee meeting at which a claim is reviewed, a WSI representative is available to electronically access the injured employee's WSI records.

First Claim

Issues for Review

The injured employee reported on February 5, 2017, WSI denied the injured employee's request to reopen his 1974 claim because its medical consultant concluded there was no clear and convincing medical documentation or other

evidence indicating the injured employee's right knee or left ankle problems were primarily caused by the original work injury. The injured employee provided the following issues for consideration:

- The system does not adequately maintain documents and records in a broad, clear, and detailed manner.
- The injured employee did not understand the process fully, 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 but the injured employee does not have access to legal counsel. There are so few attorneys in the state willing to represent injured employees that the injured employee would not have been able to find an attorney even if he had been able to afford one. The system should be designed to take care of the injured employee and do what is in the best interest for the injured employee.

Workforce Safety and Insurance Response

The WSI representative reviewed Sections 65-05-01 and 65-05-35(1)(2), which provide the claimant bears the burden of proving any entitlements to benefits and a claim for benefits is presumed closed if WSI has not paid any benefit or received a demand for payment of any benefit for 4 years. If a claim is dormant for an extended period of time without treatment, the claim becomes difficult to assess. If a claim is dormant for 4 years or more, the claim is presumed closed. Clear and convincing evidence the work injury is the primary cause of the current symptoms is required to reopen a claim presumed closed due to dormancy. There was no diagnosis for the injured employee's right knee or left ankle in 1974, and it was difficult to establish by clear and convincing evidence the injured employee's 1974 work-related injury was the primary cause of his current right knee and left ankle problems. Workforce Safety and Insurance seeks objective medical evidence supporting whether a work-related injury is a compensable injury. According to the WSI representative, in the injured employee's situation, the medical consultant found no evidence a diagnosis of degenerative arthritis resulting from the injured employee's 1974 work-related injury.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- Whether significantly better means are being used to document work-related accidents and injuries compared to how those reports were documented in the 1970s.
- Multiple injured employees have raised the issue of inability to access legal representation.
- Workforce Safety and Insurance's acceptance of witness statements as corroborating evidence of a work-related injury.

Second Claim

Issues for Review

The injured employee reported an administrative law judge affirmed a WSI order relating to compensability. The injured employee did not appeal the decision to district court and the order became final. The injured employee provided the following issues for consideration:

- A better method or mechanism is needed for reimbursing attorneys who take claims against WSI.
- Injured employees choose not to pursue appeals of WSI decisions because of the difficulty of finding legal representation and a perception exists it is unlikely WSI decisions will be overturned on appeal.
- Workforce Safety and Insurance's doctors do not have the injured employee's interests at the forefront because the doctors work for WSI.

Workforce Safety and Insurance Response

The Workforce Safety and Insurance representative reviewed Section 65-01-02, which defines a compensable injury as "an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings." In addition, under Section 65-01-02(10)(b)(7), the term "compensable injury" does not include injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity.

The Workforce Safety and Insurance representative reported WSI does not pay for pre-existing conditions if the conditions become symptomatic, but will pay if work substantially worsens or substantially progresses that underlying condition. The distinction is a clear delineation between what is covered by health insurance and what is related to an industrial incident. The Workforce Safety and Insurance representative concluded had WSI had been aware of the injured employee's pre-existing conditions in a timely manner, her claim would not had been accepted because documentation established her pre-existing conditions became symptomatic but had not worsened substantially.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- Multiple injured employees have raised the issue of inability to access legal representation.
- Regarding attorney reimbursement for taking workers' compensation cases, Section 65-02-08 provides that if an injured worker has a successful claim or appeal, whether at the administrative law level or in court, WSI must pay the attorney. The actual amounts reimbursed are specified within the North Dakota Administrative Code and the amounts are reviewed and adjusted every other year.

Third Claim

Issues for Review

The injured employee reported her claim relating to carpal tunnel syndrome was denied because the WSI medical consultant determined there is no causal relationship between the diagnosis of carpometacarpal and the individual's work duties even though her physician said her injury was related to her work. The injured employee provided the following issues for consideration:

- Medical providers are frustrated with WSI's system.
- Since every employee is going to have some degree of degeneration, WSI should not be able to deny responsibility claiming a pre-existing condition.
- Workforce Safety and Insurance should not be able to conclude a physician's opinion is not objective medical evidence when the examining specialist is a specialist in the medical field.
- Workforce Safety and Insurance did not give weight to the opinion of the doctor who stated the condition was related to employment.

Workforce Safety and Insurance Response

The WSI representative reviewed Section 65-01-02, which defines a compensable injury as "an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings." The Workforce Safety and Insurance representative reported WSI will either write to the physician that objective medical evidence is needed or issue an order denying the claim for lack of objective medical evidence.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The treating physician should not be designated statutorily as the primary physician because the treating physician may not be an expert in a particular medical area.
- Section 65-05-08.3 addresses the factors WSI must consider when resolving conflicting medical opinions.
- The issues of pre-existing conditions and degenerative conditions are issues constituents commonly raise with legislators and which are especially relevant as the workforce ages.
- The system could be improved to facilitate better communication among various medical providers.

Fourth Claim

Issues for Review

The injured employee reported WSI issued an order indicating no permanent impairments benefits are payable in connection with the injured employee's work injuries because the percentage of whole body impairment did not meet the statutory requirement of 14 percent. The injured employee provided the following issues for consideration:

- Vocational rehabilitation plans should be designed in collaboration with the injured employee.
- Workforce Safety and Insurance is unwilling to provide vocational education to train an older worker for a new career.
- The system should be designed to take care of the injured employee and do what is right for the injured employee.
- Workforce Safety and Insurance should be transparent and helpful to injured employees.
- Workforce Safety and Insurance should have been more responsive to the injured employee when he contacted WSI with questions and concerns.

Workforce Safety and Insurance Response

The Workforce Safety and Insurance representative reviewed Section 65-05-12.2, which governs permanent impairment and provides a permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or wage loss. Section 65-05-12.2 requires WSI to calculate the amount of the award by multiplying 35 percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the permanent impairment multiplier specified in subsection 10. Under the schedule in Section 65-05-12.2(10) for a whole body impairment between 1 and 13 percent, the permanent impairment multiplier is 0.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- Minnesota's permanent partial impairment evaluation system radically differs from North Dakota's system because Minnesota uses a different set of American Medical Association guides.
- Vocational rehabilitation plans may not consider adequately an injured employee's mental and physical abilities.
- Vocational rehabilitation may not address adequately deteriorating medical conditions and practical return-to-work opportunities.

Fifth Claim

Issues for Review

The injured employee reported WSI denied benefits for a twisted ankle because the employee had not proven a causal connection between the employment and the injury. The injured employee provided the following issue for consideration:

- Injuries occurring while on the job and while on the employer's premises should be covered and such claims should be approved.

Workforce Safety and Insurance Response

The Workforce Safety and Insurance representative reviewed Section 65-01-02, which defines a compensable injury as "an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings." The Workforce Safety and Insurance representative stated the key words of Section 65-01-02 are "arising out of and in the course of . . . ", and an unexplained fall is not a compensable event.

The Workforce Safety and Insurance representative reported in 2012 the North Dakota Supreme Court said with respect to Section 65-01-02, the legislative intent was for claimant's to prove more than merely suffering an injury on work premises and during work hours to receive compensation for the injuries.

Committee Considerations

Committee members considered the following issue raised by the injured employee:

- When injuries occur during working hours and on the employer's premises but do not arise out of and in the course of hazardous employment, the injured employee can explore other avenues outside workers compensation, such as an employer's insurance company.

Sixth Claim

Issues for Review

The injured employee reported WSI ended benefits for the employee after a return to work and indicated later back pain is not compensable because there was no evidence that pain was related to the work injury. The injured employee provided the following issues for consideration:

- Workforce Safety and Insurance should focus on the treatment of injured employees, not benefits.
- The administrative hearing was problematic. The administrative law judge did not consider the pain experienced by the injured employee and did not take notes of the pain his work injury was causing.
- More attorneys should be available to represent injured workers. The system does not recognize an injured employee's needs for legal representation. The injured employee needs an attorney to pursue any issues the injured employee may have with WSI. Without an attorney, the injured employee is unable to receive fair treatment.
- The system does not compensate injured employees adequately for the significant loss of motion and ongoing pain resulting from injuries.

Workforce Safety and Insurance Response

The Workforce Safety and Insurance representative summarized Section 65-05-01, which provides the claimant bears the burden of proving any entitlements to benefits. The entire system is based on the premise to receive benefits, the injured worker must prove entitlement to those benefits.

The Workforce Safety and Insurance representative reported six or seven attorneys in the state handle workers' compensation law cases. Those attorneys represent injured workers at hearings. The Workforce Safety and Insurance representative concluded an attorney shortage within the scope of workers' compensation law does not appear to exist in North Dakota.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- Inability of an injured employee to access legal representation is a reoccurring issue.
- In a civil claim, the plaintiff has the burden of proof, much like the injured employee has the burden to qualify for workers' compensation benefits. If in the future, evidence is discovered linking the injured employee's injury or pain to the workplace, WSI should exercise its continuing jurisdiction to reopen the claim.

Seventh Claim

Issues for Review

The injured employee reported WSI denied a permanent partial impairment award because the impairment rating was less than 14 percent. The injured employee provided the following issues for consideration:

- The Workforce Safety and Insurance claims process should be changed to provide a little more personal insight to a claimant so a claimant is aware that if the claimant decides to accept a decision by WSI and do not appeal the decision, no further or future ways of resolving or disputing it are available.
- Claimants should be provided instructional tools and service resources to better inform a claimant of their rights and enhance the claimant's awareness of the WSI claims process.

Workforce Safety and Insurance Response

The Workforce Safety and Insurance representative reported WSI pays for three things--wage-loss benefits; medical benefits, including pharmacy; and permanent partial impairment benefits. The benefit is based upon the *Guides to the Evaluation of Permanent Impairment*, American Medical Association (6th edition). The payment is derived from permanent partial impairment, which is a standalone payment, and is unrelated to wage-loss or medical benefits. Because the permanent partial impairment rating system starts with awards beginning at 14 percent, this injured employee did not qualify due to a lower than the 14 percent threshold.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- Workforce Safety and Insurance's responses to injured employees may not be timely.
- There may be methods through which the system could be improved to facilitate better communication among various medical providers.

Eighth Claim

Issues for Review

The injured employee reported the WSI medical consultant concluded work duties did not cause degenerative changes, and the injuries were consistent with a pre-existing condition. The injured employee provided the following issue for consideration:

- Workforce Safety and Insurance should not be able to deny responsibility claiming a pre-existing condition.

Workforce Safety and Insurance Response

The Workforce Safety and Insurance representative stated the law provides WSI may not cover a pre-existing condition unless the workplace injury was a substantial contribution to the condition. The injured employee bears the burden of proving the injury is linked to work. Establishing the link is accomplished by reviewing medical opinions received from medical providers.

Committee Considerations

Committee members considered the following issue raised by the injured employee:

- The system could be improved to facilitate better communication between the treating medical providers and WSI.

Ninth Claim

Issues for Review

The injured employee reported WSI denied benefits due to a pre-existing condition. The injured employee provided the following issues for consideration:

- Workforce Safety and Insurance should not be able to deny responsibility claiming a pre-existing condition.
- The system should be designed to take care of the injured employee and do what is right for the injured employee.
- Injured employees choose to not pursue appeals of WSI decisions because of the difficulty of finding and affording legal representation, and a perception exists it is unlikely WSI decisions will be overturned on appeal.

Workforce Safety and Insurance Response

The Workforce Safety and Insurance representative summarized Section 65-01-02 which defines a compensable injury as "an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings." Under Section 65-01-02(10)(b)(7), the term "compensable injury" does not include injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Workforce Safety and Insurance does not pay for pre-existing conditions if the conditions become symptomatic, but will pay if work substantially worsens or substantially progresses that underlying condition.

The Workforce Safety and Insurance representative reported in the early 1990s North Dakota experimented with paying attorneys representing claimants irrespective of whether the claimant ultimately lost or prevailed in the appeal. Under that system, WSI's case numbers increased substantially but better results were not achieved because everything was appealed, irrespective of the outcome. That system was amended to the current method as part of the 1995 reform.

Committee Considerations

Committee members considered the following issues raised by the injured employee:

- The issues of pre-existing conditions and degenerative conditions are issues constituents commonly raise with legislators.
- The system could be improved to facilitate better communication between the treating medical providers and WSI.
- The inability of injured employees to find or afford legal representation is an issue raised regularly by injured employees.
- Inability of an injured employee to access legal representation is a recurring issue.

Tenth Claim

Issues for Review

The injured employee reported an administrative law judge had concluded the injured employee was entitled to travel-related expenses associated with treatment. After the injured employee entered an agreement to settle all claims, the injured worker contended the payment of the travel-related expenses should be in addition to the settlement amount. The injured employee provided the following issues for consideration:

- Workforce Safety and Insurance limited the information presented at the administrative hearing, failing to admit evidence that would have supported her position.
- Medical providers are frustrated with WSI's system.
- Decision Review Office is biased.
- Workforce Safety and Insurance's doctors do not have the injured employee's interests at the forefront because the doctors work for WSI.

Workforce Safety and Insurance Response

The Workforce Safety and Insurance representative reviewed Section 65-05-25, which authorizes WSI to compromise to resolve a disputed claim with an employee and, to the extent a dispute arises, WSI is authorized statutorily to settle the dispute via payment.

Committee Considerations

Committee members considered the following issue raised by the injured employee:

- Workforce Safety and Insurance's responses to injured employees may not be timely nor presented clearly or transparently enough.

Workforce Safety and Insurance Status Updates

To keep apprised of current events at WSI, the committee received status updates on topics raised as part of the claim review process.

Vocational Rehabilitation

In response to issues raised during the claim review process, the committee reviewed WSI's vocational rehabilitation system.

The committee received data regarding WSI's educational training program and the policy limiting vocational rehabilitation retraining to 104 weeks.

The committee was informed an injured employee can accept or decline retraining. If an injured employee declines retraining, WSI identifies a retained earnings capacity for the injured employee, which is wages paid times the number of hours released to return to work. If an injured employee enrolls in a retraining program, and the injured employee determines within the first 20 weeks the training is not a good fit, the injured employee may withdraw from the retraining program. Upon withdrawal, WSI assigns the injured employee the retained earnings capacity and pays the injured employee temporary partial disability for up to 182 weeks. A 2009 statutory change permits WSI to extend the 104 weeks of retraining to 124 weeks. When an injured employee is considered for a retraining program, WSI attempts to ensure the injured employee is college-ready and has the academic ability to be successful in the retraining program.

The committee also received testimony medical issues prevent an employee from continued participation in retraining. The missed days or weeks do not count against the employee's 124-week retraining period. The injured employee is placed on either a temporary total disability or temporary partial disability and paid the full disability benefit. Before admittance for retraining, WSI orders functional capacities testing done by an occupational or physical therapist to determine an injured employee's physical strength. The results are sent to the treating provider to verify the findings are an accurate reflection of the injured employee's physical capabilities. If the treating provider confirms the results are an accurate reflection of the injured employee's physical capabilities, WSI considers different retraining programs within the physical limitations of the injured worker. If the employee had cognitive issues, psychological tests are done to ensure the injured worker's success in a retraining program.

Legislative Package

The committee received a status report on the implementation of 2017 legislation relating to workers' compensation. The legislation addressed injury services, general contractor liability, a penalty for a violation of a cease and desist order, medical marijuana, legal counsel for indigents access to WSI records, and injured employee attorney fees.

Recommendations

The committee makes no recommendations with respect to changes to the workers' compensation laws.

REPORTS

Safety Grants Report

Pursuant to Section 65-03-05, the committee received the biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03. The report provided an overview of the safety training and education program, ergonomic initiative and ergonomic grant programs, learning management system, and the Occupational Safety and Health Administration Outreach 10-hour Online Training programs. The committee received data about each program, including continuing safety appropriation amount by biennium, beginning in 2005.

Modified Workers' Compensation Program Performance Review and Roughrider Industries Safety Review

Pursuant to Section 65-06.2-09, the committee inquired whether the modified workers' compensation program performance review and the Roughrider Industries safety review include any recommendations. Because the reviews do not make any recommendations for a change in either program, WSI was not required to make a report to the committee.

Rehabilitation Services Pilot Program Report

Pursuant to Section 65-05.1-06.3, the committee received reports on WSI's system of pilot programs to allow WSI to assess alternative methods of providing rehabilitation services. The report indicated WSI is establishing a rehabilitation services program referred to as the injured worker assistance program. The program is designed to provide services necessary to assist an injured employee and the employee's family in the adjustments required due to the injury. The program offers both behavioral health and financial counseling services. The recovery process is not only medical recovery, but also is a time to recover the employee's ability to return to gainful employment and address the need for financial stability. The program allows:

- The injured employee or the employee's family to receive up to six sessions with a behavioral health professional contracted exclusively for this program by WSI. The sessions must be completed within 90 days from the date of the first visit.
- The injured employee or the employee's family to receive up to four sessions with a financial professional contracted for this program by WSI. The sessions must be completed within 60 days from the date of the first visit.
- Reimbursement for mileage according to state law.
- The sessions to be confidential, and the information is not shared with WSI unless the contractor believes the participant intends to harm self or others. The contractor is required to verify attendance to ensure appropriate payment.
- Voluntary participation in the sessions.

QUADRENNIAL PERFORMANCE EVALUATION

Background

Section 65-02-30 requires the Director of WSI to request the State Auditor to select a firm to complete a performance evaluation every 4 years of the functions and operations of WSI during that evaluation period. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The evaluation report and any action taken must be presented to the committee. The committee may select up to four elements to be evaluated in the performance evaluation and is required to inform the State Auditor of the selected items to be evaluated. The State Auditor is required to include the elements selected by the committee in the performance evaluation. The State Auditor also may select up to four elements to be evaluated.

At the beginning of the interim, in accordance with Section 65-02-30, the committee selected one element and the State Auditor selected two elements to be included in the performance evaluation. The State Auditor selected identifying and evaluating WSI's safety programs and performing followup work of specified recommendations from the 2014 report. The committee selected reviewing WSI's historical management of prescribed opioids, including rates and usage to be included in the performance evaluation.

Elements

The State Auditor awarded the contract for the performance evaluation to Sedgwick Claims Management Services, Inc. (Sedgwick). The Workforce Safety and Insurance performance evaluation request for proposals (RFP) provided the following three elements be addressed:

1. Safety (risk management and loss control) programs.
   a. Identify and compare North Dakota workplace injury, illness and fatality statistics to similar jurisdictions based on comparable industry sector and category of injury and illness.
   b. Identify and evaluate WSI's safety programs.
   c. Determine whether legislative intent is being fully accomplished.
   d. Determine the utilization, and to the extent practical the effectiveness of the safety programs.
   e. Recommend improvements to workplace safety for North Dakota workers and policyholders.
2. Prior performance evaluation followup.
   a. Perform followup work of specified recommendations from the 2014 report entitled "Performance Evaluation of North Dakota Workforce Safety and Insurance" to determine if the recommendations have been implemented and to determine if further implementation is warranted.
3. Opioids.
   a. Review WSI's historical management of prescribed opioids, including rates and usage.
   b. Compare average daily morphine equivalents between North Dakota and other jurisdictions. This comparison is to include a review and recommendations of statutory or administrative rule requirements limiting the maximum daily morphine equivalents and specific situations which would allow the jurisdiction to override the maximum limits.
   c. Research any limitations on specific opioid medications, whether by duration of action or by type.

Performance Evaluation Recommendations

For the three 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.

Opioid Medications

Recommendation 1.1: Medium Priority. Sedgwick recommends examining if prescribing patterns in North Dakota show a prevalence of brand drug use, as opposed to generics, in the opioid category and make an attempt to switch to generics where possible.

Recommendation 1.2: Medium Priority. Sedgwick recommends the pharmacy benefits manager revise its threshold for tracking daily morphine equivalents and WSI periodically review and document the reasons for these results. This recommendation could inform WSI why successes are achieved which in turn can lead to greater success in the management of opioids with other still active cases. Workforce Safety and Insurance currently does not track all the reasons why injured workers drop off the listing but Sedgwick believes there is value in knowing why. Some reasons for this result can include:

- Good coordination of care between patient and provider.
- The desire of an injured worker to reduce opioid use because of the potential for addiction.
- Intervention by WSI or one of its business partners with a provider which leads to a reduction in opioid use.
- Death of the injured worker.

Recommendation 1.3: High Priority. Sedgwick recommends WSI draft legislation to be considered in the next biennium seeking to accomplish the following:

- Limit the duration of first opioid fills.
- Limit the first fills to short acting opioids with scientifically supported limits on maximum morphine equivalents.
- Limit daily morphine equivalents for chronic opioid use injured workers to scientifically supported guidelines throughout the treatment cycle unless one of the exceptions referenced above, e.g., active cancer patients, has been met.

This recommendation would allow WSI to develop administrative rules. The rules would be predicated on current science, which seems to suggest initial fills should be limited to 50 maximum morphine equivalents while patients requiring use for longer periods of time should not exceed a daily morphine equivalent of 90 milligrams. Providing WSI with administrative authority over time would allow the agency to respond to the evolving science regarding opioid use. Sedgwick recommends rules for first fills, rules for an upper limit on metallomembrane endopeptidase, known as MMEs, and exceptions that may exist due to the severity or complexity of an injury or illness.

Recommendation 1.4: Medium Priority. Upon adoption of legislation as suggested in Recommendation 1.3, Sedgwick recommends revising the manner in which WSI's pharmacy benefits manager captures morphine equivalencies on its monthly benchmark report to align with that legislation. For instance, if the legislation establishes a 90 milligram MME, the benchmark used would be for daily morphine equivalents exceeding 90 milligrams rather than the current 120 milligrams.

Safety (risk management and loss control) Programs Slip/Fall

Recommendation 2.1: High Priority. Claims were frequent in the 3 years of workers' compensation claims Sedgewick obtained, claims occurring during fiscal year 2015 through fiscal year 2017, each year valued as of 12 months. All the categories of slip/fall claims combined accounted for 19 percent of the claims and 32 percent of the total cost incurred. Given the high frequency and severity of slip, trip, fall claims, Sedgwick recommends adding an incentive component to the safety action menu program to raise awareness and mitigate the frequency and severity of this injury type.

Recommendation 2.2: Medium Priority. Sedgwick recommends encouraging more use of the learning management system by policyholders. Safety training is an effective tool for raising the awareness of employees and providing employees with knowledge on safe work practice and compliance issues. The learning management system is well suited to benefit both small and large employers but may provide more benefit for small to midsized employers that lack resources and personnel fluent in specific safety topics. The learning management system can fill that gap to provide high-quality safety training at no cost to the employer.

Recommendation 2.3: Low Priority. If the transitional return-to-work program is utilized in the future, Sedgewick recommends the program be managed by the return-to-work director in injury services, and these efforts closely coordinated with loss control in employer services. The return-to-work program has a solid working relationship with the medical and return-to-work communities. However, loss control safety consultants work with the policyholders on an individual level and would be able to identify when policyholders are having a difficult time accommodating modified duty. Safety consultants would be the ideal experts to conduct "onsite assessment of work spaces" to assist the employer in accommodating or even permanently modifying jobs to accommodate workers.

Recommendation 2.4: High Priority. Sedgwick recommends including a brief executive summary in detailed claims analysis and dashboard reports that are provided to policyholders listing risk improvement recommendations or areas of focus based on historical loss trends.

The detailed claims analysis report is the detailed, 22-plus-page, 5-year analysis that covers a single policyholder's trends in frequency and severity of claims by part of body, cause of injury, nature of injury, day of occurrence, month of occurrence, length of employment, time of day, and age of claimant. The dashboard report is a 3-page, 5-year history of a single policyholder's various annual measures, such as standard premium, gross payroll and number of employees, number of claims, number of loss time days, total cost incurred, experience rating, dividends and discounts, completed safety training courses and grant monies received.

If the safety consultant composed an executive summary for these reports which lists one, two, or three potential risk improvement recommendations or areas of focus based on the current data trends, this could help to set safety management program and safety action menu program goals that really could have an impact on that individual policyholder's loss experience. Specific WSI resources that are associated with these specific areas of focus should be recommended or offered.

As an example, an executive summary might consist of the following:

- "The severity of lifting claims has increased over the last 2 years. Workforce Safety and Insurance offers training in safe lifting techniques (name specific courses that are pertinent to their industry). There is also a grant program that covers ergonomic evaluations and interventions as well."
- "The number of falls from ladders has doubled in the last year. Consider our online ladder safety training course."

The benefit of assisting the policyholder on focusing and setting goals around specific trends also will encourage followup on these issues from year to year, particularly if claims still are occurring in these areas.

Recommendation 2.5: Medium Priority. Sedgwick recommends continuing promoting the safety incentive programs to nonparticipants. This recommendation includes:

- Considering targeting policyholders not currently active in the safety management program or a safety action menu program who personally have not been made aware of the safety programs within the last 3 years. Use a combination of claim frequency and claim severity to target employers.
- For the targeted employers, the local safety consultant would review the employer's detailed claims analysis or dashboard report and add an executive summary that lists one, two, or three potential risk improvement recommendations or areas of focus based on the current data trends. When the safety consultant reaches out to these targeted employers, the safety consultant would be able to provide targeted employees with this customized report based on their specific needs.

Prior Performance Evaluation Followup

Prior recommendations from the 2014 Performance Evaluation which are the subject of this performance evaluation are summarized as follows:

- Prior Recommendation 1.4 - A review of whether WSI made attempts to locate North Dakota physicians who will serve as independent medical evaluators to improve the frequency of use of North Dakota physicians.
- Prior Recommendation 1.7 - A review of whether all independent medical evaluation-related claims procedures were reviewed with the claims staff, more specifically the claims supervisors to ensure the processes and procedures are being followed.
- Prior Recommendation 2.2 - A review of whether WSI developed a process in conjunction with its medical vendors to review atypical payment trends as a starting point for provider fraud investigation.

- Prior Recommendation 2.3 - A review of whether WSI developed techniques in data mining to detect fraud, notably as regards medical providers, given the lack of provider fraud detected not only in the performance evaluation period but before that period as well.
- Prior Recommendation 6.1 - A review of whether WSI worked with its new pharmacy benefits manager to reinitiate its patient utilization review report.
- Prior Recommendation 6.2 - A review of whether WSI updated its process to include a form letter to the provider receiving an FL 423-1 letter. The letter would request the provider to identify a date when they believe the patient will be able to discontinue use of opioid treatment.
- Prior Recommendation 6.3 - A review of whether WSI drafted legislation to be considered in the next biennium to seek to accomplish that chronic opioid use cases can be more effectively managed.
- Prior Recommendation 6.4 - A review of provider profiling as regards to opioid prescribing patterns and higher cost/use cases.
- Prior Recommendation 6.5 - A review of WSI's formulary, specifically controls on long-acting opioids

Recommendation 3.1: High Priority. Sedgwick recommends WSI continue to take steps to identify North Dakota medical professionals WSI can add to its group of independent medical evaluation (IME) medical vendor/partners. Sedgwick also recommends WSI work closely with one or more IME provider groups to have them recruit and vet in-state physicians.

Recommendation 3.2: Medium Priority. Sedgwick continues to recommend supervisors review IME processes the same way as other claims management practices to assure processes and policies are being followed. The claims director also should have a role in the review process. Collectively, a sample of one IME process review/week by the claims director or supervisor can be accomplished without increasing workload in a significant way. The nine supervisors and a claims director, could conduct about five reviews per year per person. Review results should be reviewed quarterly to determine if additional training in this area should be accomplished to assure process compliance.

Recommendation 3.3: High Priority. Sedgwick recommends WSI invest in fraud detection training for staff which will support its ability to identify atypical payment and referral trends found in their data.

Recommendation 3.4: Medium Priority. Sedgwick recommends sending a letter requesting information from providers once an injured worker is prescribed a third fill. The information requested would be similar to the prior recommendation but would simply occur at a later time. Most injured workers will not receive more than two fills, so the intent of the letter would be to ask providers to address longer term treatment needs at a time when opioid use is being extended into the subacute treatment phase, but before the case reaches a chronic state.

Recommendation 3.5: High Priority. Assuming Recommendation 1.3 is adopted and Recommendation 1.4 is implemented, Sedgwick recommends the medical services and pharmacy director and injury services staff develop claims procedures designed to track how cases with maximum morphine equivalencies exceeding 90 milligrams are being managed.

The claims procedures should require claims staff make sure there is either an opioid reduction or weaning treatment plan in place or provide sound justification as to why no reduction should be considered. Claims staff should review such cases quarterly to evaluate progress.

Workforce Safety and Insurance has in place a program with a vendor partner to address cases in which opioid reduction or weaning should be more aggressively managed. With the objective of trying to reduce maximum morphine equivalencies to 90 milligrams or less, more referrals could occur.

Recommendations

The committee makes no recommendations with respect to the performance evaluation report or the actions taken resulting from the performance evaluation report.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE MANAGEMENT FOR THE 2017-19 INTERIM

The following table identifies the bills and resolutions considered by the Legislative Management for study during the 2017-18 interim under the authority of North Dakota Century Code (NDCC) Section 54-35-02:

Bill or Resolution No.	Subject Matter (Committee)
1008 § 7	Study the impact of wind energy development on the environment, addressing and researching issues common to North Dakota landowners, and identifying potential issues for legislation. The study may include consideration of the impact of wind energy development on the environment, including aesthetic impacts; the impact of wind energy development on property values; the impact of wind energy development on agriculture; the advantages and disadvantages of implementing legislation for pooling or unitization of wind resources similar to that of the oil and gas industry in NDCC Chapter 38-08; and the necessary processes for the decommissioning of a wind energy project. (Natural Resources Committee)
1012 § 32	Study options to operate the state medical assistance program and other related programs, as managed care. The study must identify and review populations to consider for managed care, including individuals eligible under traditional medical assistance, Medicaid Expansion, the children's health insurance program, and individuals receiving services through the long-term care and developmental disabilities programs; consider the needs of individuals receiving services from managed care programs in similar-sized states, and the alignment of benefit packages; review populations covered by the program of all-inclusive care for the elderly in other states; consider options for including services under a managed care arrangement; consider developing a proposed plan, cost estimates, and potential timeline for implementing the managed care options identified; and consider preparing and distributing a request for information from managed care organizations regarding the managed care options identified. (Health Care Reform Review Committee)
1012 § 33	Study state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs. The study must include a review of the state's services and delivery systems, including whether changes are necessary to maintain compliance with state and federal laws and regulations; efforts by other states to comply with the 1999 *Olmstead v. L.C.* case, including the planning and implementation process for any new programs; community- and non-community-based services, including the costs and effectiveness of services; noncompliance with state and federal laws and regulations, including a review of the fees and penalties for noncompliance; a comparison of voluntary and involuntary compliance with state and federal laws and regulations, including a review of long-term costs and effectiveness; the impact of implementation and expansion of selected programs that were added to address unmet needs, including the impact on costs and effectiveness of new programs; needed changes to address noncompliance and a timeline for completing changes; data on the number of individuals who would be impacted by voluntary compliance efforts, and data on the type of services that may need changing, including housing, peer counseling, outpatient treatment, crisis line access, and transportation services; and an evaluation of the funding, mission, and caseload at the Life Skills and Transition Center, including the center's transition plan and number of clients eligible for community placement. (Health Services Committee)
1012 § 34	Conduct a comprehensive study of the Department of Human Services. The study must include--a review of the continuum of services for each population served, the delivery methods for those services, and the efficiency and effectiveness of the services; the involvement of federal, state, and local governments and for-profit and nonprofit entities in the provision and funding of services; an analysis of the funding levels for the programs and services included in the delivery system; consideration of the appropriate role for each of the entities involved in the delivery system; and the development of a comprehensive master structure for the system. (Human Services Committee)
1013 § 23	Study the feasibility and desirability of combining services for any or all English language learner programs, distance learning programs, regional education agencies, teacher center networks, adult learning centers, career and technical education programs, education technology services, continuing education for counselors, educational leadership, and the teacher mentoring program. (Education Policy Committee)
1015 § 33	Study tribal taxation issues, including the tax collection agreements that exist between the tribes and the state, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, and the procedure for withdrawal from an agreement and how to handle disputed funds. (Tribal Taxation Issues Committee)
1015 § 33	Study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development. (Tribal Taxation Issues Committee)

Bill or Resolution No.	Subject Matter (Committee)
1015 § 34	Study the taxation of wind energy and the distribution of tax collections related to wind energy. The study must include consideration of the various methods of taxing wind energy, including production taxes, the parity of wind energy taxation in comparison to the taxation of other energy sources, and the current and historical distribution formulas related to wind energy taxes; the appropriate level of distributions to the taxing districts and the state; the estimated fiscal impact of any proposed changes to the distributions; and other local revenue sources, including local tax revenue and state funding provided to the local taxing districts. (Energy Development and Transmission Committee)
1015 § 35	Study the volatility of state revenue sources. The study must include the volatility of the tax base and revenue sources, including ongoing expenditures. The study also must include consideration of the volatility and sustainability of elementary and secondary education funding, including the general fund, common schools trust fund, and foundation aid stabilization fund. The study must include an assessment of the ending fund balances in the general fund, budget stabilization fund, and foundation aid stabilization fund, the adequacy of the foundation aid stabilization fund relative to revenue sources, and an analysis of the other trust funds. The study must include historical revenue for all years for which quality data are available. (Government Finance Committee)
1020 § 14	Study issues related to the state's development of a statewide flood hazard risk management framework by granting authority to the State Engineer to perform a study and proof of concept demonstration to implement statewide flood risk management capabilities for assessing, managing, and reducing property-specific flood risk. (Water Topics Overview Committee)
1020 § 26	Study industrial water use of the oil and gas industry. The study must include the recapture of water used in fracking, the recycling of water used in fracking, and other oil and gas activities, fracking methods which do not require the use of water, and taxes or fees other states charge for water used in the oil and gas industry. (Water Topics Overview Committee)
1029 § 2	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 is refused, and whether the benefits of accepting certain federal funds outweighs the requirements of participation in the federal programs. (Government Administration Committee)
1126 § 20	Study practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein. (Agriculture Committee)
1206 § 4	Study adoption by an identified or an unidentified adoptive parent. The study must include an evaluation and a comparison of the adoptive process and procedure, expenses, duration, and state tax credits and deductions associated with adoption by an identified or an unidentified adoptive parent. (Judiciary Committee)
1233 § 3	Study those provisions of Century Code that relate to firearms and weapons, for the purpose 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. (Judiciary Committee)
1318 § 1	Study how state aid for elementary and secondary education is determined and distributed under the state aid funding formula, analyze the impact of the state aid provided through the funding formula, and consider potential necessary changes to the funding formula to ensure equity, adequacy, and sustainability and examine the delivery and administration of elementary and secondary education in the state and the short- and long-term policy and statutory changes that may result from or be necessitated by 21st Century technological advances and global economics. (Revised by the Legislative Management) (Education Funding Committee)
1324 § 5	Study entities that deliver K-12 professional development services, distance curriculum, support for schools in achieving school improvement goals, assistance with analysis and interpretation of student achievement data, and technology support services. The study must focus on the funding, governance, nature, scope, and quality of services provided to schools. The study also must focus on the duplication of services across entities and the accountability for expenditures. The study must identify efficiencies and the desirability and feasibility of consolidating services. (Education Policy Committee)
1380 § 2	Study the duties and role of the North Dakota Firefighter's Association. (Government Administration Committee)
1390 § 3	Study and monitoring the nutrient management plan developed by the State Department of Health. (Agriculture Committee)

Bill or Resolution No.	Subject Matter (Committee)
1418 § 1	Study the purpose and content of statements of interests and the forms and information required to be filed, including the appropriate financial interests and other necessary content. The study must include consideration of whether supplementary statements or updates of information are necessary and a determination as to who is required to file statements of interest and who should be filing statements of interest. The study also must include a review of filing deadlines and consideration of how long records should be retained. (Government Administration Committee)
1423 § 1	Study the portion of the elementary and secondary education funding formula which relates to the utilization of in lieu of property tax funds for the purpose of identifying and addressing any inequities in the application of the formula. (Education Funding Committee)
1427 § 1	Study the impact of refugee resettlement on workforce, government services, particularly law enforcement, human services, education, and health care. The study shall include information from the resettlement agency, state and local government, and the business community. The study must develop recommendations to improve or modify the resettlement process. (Revised by Legislative Management) (Human Services Committee)
2001 § 8	Study the delivery and cost of the Information Technology Department's services provided to state agencies. The study must include a review of the department's cost of services, staffing, and billing processes and must identify improvements to the efficiency and effectiveness of the department's services that will result in reduced costs for state agencies. (Information Technology Committee)
2001 § 9	Study the delivery and cost of the Department of Transportation's State Fleet Services for state agencies. The study must include a review of the department's cost of services, staffing, and billing processes and identify improvements to the efficiency and effectiveness of the State Fleet Services that will result in reduced costs for state agencies. (Government Finance Committee)
2003 § 34	Study the relationship between the University of North Dakota (UND) and the Energy and Environmental Research Center. The study must include a review of the working relationship between the entities including financial responsibilities and expectations of each entity including potential alternative administrative reporting lines and business models. (Higher Education Committee)
2012 § 12	Study the funding mechanisms and options available to the Department of Transportation, political subdivisions, and public transportation providers, for road construction, maintenance, other transportation infrastructure needs, and transit services. (Government Finance Committee)
2013 § 22	Study oil and gas tax revenue allocations to hub cities and hub city school districts. The study must include consideration of the current and historical oil and gas tax revenue allocations to hub cities and hub city school districts; other state funding provided to hub cities and hub city school districts, including grants from the oil and gas impact grant fund, distributions from the strategic investment and improvements fund, state school aid payments, and payments from the state aid distribution fund and highway tax distribution fund; local taxing and revenue levels in hub cities compared to cities in non-oil-producing counties, including mill levies, property tax values, local sales and use taxes, and other revenue sources; the appropriate level of oil and gas tax revenue allocations to hub cities and hub city school districts based on infrastructure and other needs; the estimated fiscal impact to hub cities, hub city school districts, other political subdivisions, and the state if the oil and gas tax revenue allocation formula would be changed to transition hub cities and hub city school districts from allocations under NDCC Section 57-51-15(1) to allocations under NDCC Section 57-51-15(4)(5); the estimated fiscal impact to hub cities, hub city school districts, other political subdivisions, and the state if the oil and gas tax revenue allocation formula would be changed to discontinue the allocations to hub cities and hub city school districts under NDCC Section 57-51-15(1). (Energy Development and Transmission Committee)
2015 § 11	Study alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system which must include caseload data, any recognized savings to the Department of Corrections and Rehabilitation, an overview of the training requirements for contract behavioral health service providers, and recommendations. (Justice Reinvestment Committee)
2015 § 12	Study the operation, management, conditions, caseload, and physical plant of the Tompkins Rehabilitation Center at the State Hospital. The study must include the potential transition of the Tompkins Rehabilitation Center, including the transfer of the building, employees, and supervision and management of all operations and caseload of the Tompkins Rehabilitation Center, from the Department of Human Services and the State Hospital to the Department of Corrections and Rehabilitation. (Human Services Committee)
2016 § 9	Study office space cost and value of properties owned by Job Service North Dakota in Fargo, Rolla, Minot, and Bismarck with input from the Office of Management and Budget. If Job Service North Dakota sells or leases any property identified in this section before July 1, 2017, the property may not be included in the study. (Government Administration Committee)

Bill or Resolution No.	Subject Matter (Committee)
2020 § 14	Study the State Soil Conservation Committee. The study must include a review of the duties, responsibilities, and related costs and efficiencies of the committee and related North Dakota State University (NDSU) Extension Service staff, the needs of the soil conservation districts, and the necessity to continue the State Soil Conservation Committee. (Agriculture Committee)
2135 § 1	Study the initiated and referred measure laws of North Dakota, including the process and cost of measures, the process used in other states, whether the constitution or state laws should be amended, and the effect of out-of-state funding on the process. (Initiated and Referred Measures Study Commission)
2156 § 4	Study, in consultation with the Geological Division of the Department of Mineral Resources and the Environmental Health Section of the State Department of Health, whether state and local level regulation of high-level radioactive waste disposal is consistent with applicable federal regulations; how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits; the mechanisms for calling a special session to approve the depositing of high-level radioactive waste material in the state and the notice of disapproval requirements under federal law; special laws, local laws, and existing code regarding the potential existence of a legislative veto over executive branch authority to determine the size, scope, and location of high-level radioactive waste material deposits in the state and any existing conflicts with the Commerce Clause; and the feasibility and desirability of developing new statutes and regulations for subsurface disposal of waste and the storage and retrieval of material. (Natural Resources Committee)
2166 § 6	Study how city growth and infill development affects property taxes, and evaluate the return on investment for state and community projects. The study must examine various policies affecting city development patterns, including the impact of transfer payments between state and local governments; the cost of government services and infrastructure, including future liability; the amount of tax revenue generated per increment of assumed liability for downtown areas; and whether certain areas of a city generate more revenue than expenses while other areas generate more expenses than revenue. (Taxation Committee)
2166 § 7	Study the duplicative application of property tax incentives, including benefits received by properties located in both a tax increment financing district and a renaissance zone; the duration for which a single property may benefit from the use of multiple property tax incentives; and the impacts on the remainder of the property tax base that is not receiving incentives created as a result of offering property tax incentives. (Taxation Committee)
2206 § 18	Study the property tax system, with emphasis on the feasibility and desirability of providing property tax reform and relief. The study must include consideration of all property classifications and taxing districts and evaluate historical fluctuations in property values, the transparency of the property tax system, the processes and procedures available to taxpayers to contest valuations and assessments, the manner in which property tax information is provided to taxpayers, the process of determining taxing district budgets, and taxpayer participation and input in the property tax system. (Taxation Committee)
2230 § 1	Study the feasibility and desirability of providing an income tax credit to individuals for premiums for hybrid long-term care partnership plan insurance coverage and the feasibility and desirability of incentivizing asset protection that may be equal to the amount paid out by the hybrid long-term care partnership plan. (Taxation Committee)
2245 § 1	Study the desirability and feasibility of creating a state wetlands bank. The study must include consultation with stakeholders to examine land parcels under the control and management of the state which are suitable for wetlands mitigation. (Agriculture Committee)
2286 § 4	Study cooperation and communication between the Public Service Commission and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and public hearing process. The study must include examination of the impacts on relationships between landowners and the oil and gas industry; impacts on the efficiency of the siting process, including timelines associated with notification and permitting; impacts on the public input process; and impacts on compliance with, and enforcement of, political subdivision zoning ordinances. (Natural Resources Committee)
2325 § 2	Study the state's early intervention system for children from birth to age 3 with developmental disabilities. The study may include a historical overview of the system, funding mechanisms, including Medicaid, the broader implications of how the state's system interfaces with other early childhood systems, and responsibilities for implementing federal law directing states participating in Part C of the federal Individuals with Disabilities Education Act to locate and evaluate children from birth to age 3. (Health Services Committee)
3002	Study the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from the Department of Corrections and Rehabilitation to the Attorney General. (Justice Reinvestment Committee)
3003	Study the impact of Marsy's Law on the statutorily provided rights of crime victims and those alleged to have committed crimes, and the criminal procedures relating to the rights of victims and criminal defendants. (Judiciary Committee)

Bill or Resolution No.	Subject Matter (Committee)
3014	Study the various legal notice and publishing requirements of all state agencies and political subdivisions, the related costs required in state and political subdivision budgets, and potential notification alternatives. (Judiciary Committee)
3016	Study the desirability of moving city and other local elections from the primary election in June in even-numbered years to the general election in November in even-numbered years. (Government Administration Committee)
3026	Study the membership and state supervision of the state's occupational and professional licensing boards in order to retain antitrust law immunity. (Administrative Rules Committee)
3027	Study the estimated fiscal impact to the state of refracturing existing oil wells, including the estimated costs and benefits related to tax collections and any potential tax incentives for refracturing existing oil wells. (Energy Development and Transmission Committee)
4003	Study the current juvenile justice process, the appropriate age when a juvenile is considered capable of committing a criminal offense, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process. (Justice Reinvestment Committee)

NDCC Citation	Subject Matter (Committee)
4.1-01-11	Receive report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities. (Agriculture Committee)
4.1-36-04	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)
4.1-44-04	Determine when agricultural commodity promotion groups must report to the standing Agriculture Committees. (Legislative Procedure and Arrangements Committee)
4.1-45-17	Receive annual audit report from the State Fair Association. (Legislative Audit and Fiscal Review Committee)
4.1-72-08	Receive electronic copy of audit report from the North Dakota Stockmen's Association at least once every 2 years. (Legislative Audit and Fiscal Review Committee)
6-09-15.1	Receive a report from the Office of Management and Budget regarding any loans obtained pursuant to Section 6-09-15.1. (Budget Section)
10-19.1-152	Receive annual audit report from a corporation receiving an ethanol or methanol production subsidy. (Legislative Audit and Fiscal Review Committee)
11-38-12	Receive annual report from the NDSU Extension Service on full-time equivalent position adjustments made. (Budget Section)
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 campus improvements and building maintenance of more than $385,000, if financed by donations. (Budget Section)
15-10-12.3	Receive biennial report from each institution under the control of the State Board of Higher Education undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used which details the source of all funds used in the project. (Budget Section)
15-10-44	Receive report from the State Board of Higher Education, on request, regarding higher education information technology planning, services, and major projects. (Information Technology Committee)
15-10-47	Receive reports from the Office of Management and Budget regarding the State Board of Higher Education's project variance semiannual reports regarding construction projects valued at more than $250,000. (Budget Section)
15-10-59	Receive annual report from the State Board of Higher Education regarding the number of North Dakota academic scholarships and career and technical education scholarships provided and demographic information pertaining to the recipients. (Higher Education Committee)
15-12.1-05	Receive annual report from the NDSU Main Research Center on full-time equivalent position adjustments made. (Budget Section)
15-12.1-17(8)	Receive report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures. (Agriculture Committee)
15-12.1-17(10)	Receive status report from the State Board of Agricultural Research and Education. (Budget Section)
15-39.1-05.2	Receive notice from the Board of Trustees of the Teachers' Fund for Retirement of necessary or desirable changes in statutes relating to the administration of the Teachers' Fund for Retirement Fund. (Employee Benefits Programs Committee)

NDCC Citation	Subject Matter (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 UND School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the UND School of Medicine and Health Sciences. (Higher Education Committee)
15-69-05	Receive annual audits from a center of excellence that is awarded funds under NDCC Chapter 15-69 on the funds distributed to the center, until completion of four years following the final distribution of funds. (Budget Section)
15-70-05	Receive report from any tribally-controlled community college receiving a grant under NDCC Chapter 15-70 detailing the expenditures of the grant funds, a copy of the institution's latest audit report, and documentation of the enrollment status of students. (Higher Education Committee)
15.1-02-09	Receive annual report from the Superintendent of Public Instruction by the end of February on the financial condition of school districts. (Education Funding Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports. (Education Funding Committee)
15.1-06-08	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 Policy Committee)
15.1-06-08.1	Receive a report from the Superintendent of Public Instruction regarding waivers applications under NDCC Section 15.1-06-08.1. (Education Policy Committee)
15.1-06-08.2	Receive reports from the Superintendent of Public Instruction annually regarding the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules; and a review of evaluation date results. (Education Policy Committee)
15.1-13-36	Receive report from the Education Standards and Practices Board regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board. (Education Policy 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 Policy 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)
18-11-15	Receive notice from firefighters relief associations of the association's intent to provide a substitution monthly service pension. (Employee Benefits Programs Committee)
18-13-02(6)	Receive report from the State Fire Marshal each interim on the State Fire Marshal's findings and any recommendation for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes. (Health Services Committee)
19-24.1-39	Receive annual reports from the State Department of Health on the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers; and expenses incurred and revenues generated by the department. (Judiciary Committee)
20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by the Director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding $10,000 by the Game and Fish Department. (Budget Section)
20.1-02-16.1	Authorize the Game and Fish Department to spend money in the game and fish fund if the balance would be reduced below $15 million. (Budget Section)
21-10-11	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)
21-10-11	Receive at least semiannual reports from the Legacy and Budget Stabilization Fund Advisory Board. (Budget Section)

NDCC Citation	Subject Matter (Committee)
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)
23-43-04	Receive report by the State Department of Health before June 1 of each even-numbered year, regarding progress made toward the recommendations provided in NDCC Section 23-43-04 and any recommendations for future legislation. (Health Services Committee)
25-04-02.2	Authorize the Life Skills and Transition Center 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. (Legislative Audit and Fiscal Review Committee)
26.1-50-05	Receive annual audited financial statement and report from the North Dakota low-risk incentive fund. (Legislative Audit and Fiscal Review Committee)
28-32-07	Approve extension of time for administrative agencies to adopt rules. (Administrative Rules Committee)
28-32-10	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking. (Administrative Rules Committee)
28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking. (Administrative Rules Committee)
28-32-18	Determine whether an administrative rule is void. (Administrative Rules Committee)
28-32-42	Receive notice of appeal of an administrative agency's rulemaking action. (Administrative Rules Committee)
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 presidentially declared and governor-declared disasters in the state. (Budget Section)
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)
38-22-15	Receive, along with the Governor, report from the Industrial Commission in December 2014 and every 4 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)
39-03.1-29, 54-52-23, 54-52.1-08.2	Approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements. (Employee Benefits Programs Committee)
39-34-05	Receive report from the Department of Transportation regarding information collected from transportation network companies during each biennium. (Government Finance Committee)
40-23-22.1	Approve waiver of exemption of state property in a city from special assessments levied for flood control purposes. (Budget Section)
40-63-03	Receive annual reports from the Division of Community Services on renaissance zone progress. (Taxation Committee)
40-63-03(10)	Receive annual report from the Department of Commerce compiling reports from cities that have a renaissance zone included in a tax increment financing district. (Taxation Committee)
40-63-07(9)	Receive annual report from the Division of Community Services on conclusions of annual audits of renaissance fund organizations. (Budget Section)
45-10.2-115	Receive annual audit report from a limited partnership receiving an ethanol alcohol or methanol production subsidy. (Legislative Audit and Fiscal Review Committee)
46-02-05	Determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws. (Legislative Procedure and Arrangements Committee)
47-30.1-24.1	Receive report from the Commissioner of University and School Lands identifying every state agency that has not submitted a claim for property belonging to that agency. (Budget Section)
47-30.1-24.1	Approve state agency relinquishment of unclaimed property belonging to that agency. (Budget Section)
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 6 months before or 3 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)
50-06-32.1	Receive report from the Department of Human Services regarding the autism spectrum disorder program pilot project. (Human Services Committee)
50-06-43	Receive a report from the Task Force on Children's Behavioral Health every 6 months regarding the task force's efforts. (Health 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)
50-24.1-37	Receive a report from the Department of Human Services before August 1 of each even-numbered year, regarding provider reimbursement rates under the medical assistance expansion program. (Human Services 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)
50-34-01	Receive a report from the Department of Human Services before November 1, 2018, on the status of the state-paid economic assistance and social service pilot program and the development of a plan for permanent implementation. (Taxation 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 3 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 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)

NDCC Citation	Subject Matter (Committee)
54-06-33	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing state agencies to provide employer-paid costs of training or educational courses to employees in the classified service. (Administrative Rules Committee)
54-06-33	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. (Employee Benefits Programs Committee)
54-06-34	Receive biennial report from the Office of Management and Budget summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. (Employee Benefits Programs Committee)
54-06-37	Approve purchase or lease of aircraft by a state agency or entity of state government, other than the Adjutant General or the UND 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, 54-35-15.4	Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews. (Information Technology Committee)
54-11-01	Receive report from the State Treasurer, within 90 days of the beginning of each fiscal year, regarding all warrants and checks outstanding for more than 90 days and less than 3 years. (Budget Section)
54-14-03.1	Receive reports on fiscal irregularities. (Budget Section)
54-16-04(1)	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(2)	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)
54-16-04.1	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(4)	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)

NDCC Citation	Subject Matter (Committee)
54-17-40	Receive report from the Housing Finance Agency at least once per biennium regarding the activities of the housing incentive fund which must include the overall number of units owned, master leased, or subsidized by political subdivisions or other employers of essential service workers; and a listing of projects approved and the number of units within those projects that provide housing for essential service workers. (Budget Section)
54-17-42	Receive report from the Industrial Commission if any order, regulation, or policy of the Industrial Commission has an estimated fiscal effect on the state in excess of $20 million in a biennium. (Budget Section)
54-17.7-13	Receive biennial report from the North Dakota Pipeline Authority on its activities. (Energy Development and Transmission Committee)
54-17.8-07	Receive biennial report from the North Dakota Outdoor Heritage Advisory Board. (Budget Section)
54-23.3-11	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)
54-27-22	Approve use of the preliminary 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)
54-27-27.1	Receive a report by the Office of Management and Budget by October 15 of each even-numbered year, regarding the reports received by the Office of Management and Budget from each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, a plan to operate the state agency when federal funds are reduced by 5 percent or more of the total federal funds the state agency receives. (Government Administration Committee)
54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the general fund to offset projected decrease in general fund revenues. (Budget Section)
54-35-02	Review uniform laws recommended by the Commission on Uniform State Laws. (Judiciary Committee)
54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall. (Legislative Procedure and Arrangements 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)
54-35-02.2	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	Report on the committee's project prioritization process, provide updates on allocated program expenditures, and report on the fund balances of projects, grants, and contracts. (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 $500,000 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 State Board of Higher Education relating to higher education information technology projects with a total cost of $500,000 or more and receive and review information from the Information Technology Department regarding any information technology project of an executive branch agency with a total cost of between $100,000 and $500,000. (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)

NDCC Citation	Subject Matter (Committee)
54-35-15.2	Review the activities of the Information Technology Department, statewide information technology standards, the statewide information technology plan, and major information technology projects; review cost-benefit analyses of major projects; conduct studies; and make recommendations regarding established or proposed information technology programs and information technology acquisition. (Information Technology Committee)
54-35-18	Study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. (Energy Development and Transmission Committee)
54-35-22	Review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation. (Workers' Compensation Review Committee)
54-35-26	Study the analysis of economic development tax incentives as provided in NDCC Section 54-35-26. (Taxation Committee)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority. (Government Administration Committee)
54-44-04(23)	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 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)
54-59-02.1	Receive from the Chief Information Officer recommendations of the Information Technology 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 Chief Information Officer of the North Dakota University System regarding coordination of information technology between the Information Technology Department and higher education. (Information Technology Committee)
54-59-19	Receive annual report from the Information Technology Department. (Information Technology Committee)
54-59-36	Receive report from the Statewide Longitudinal Data System Committee regarding recommendations for further development, cost proposals, proposals for legislation, and recommendations for data sharing governance. (Information Technology Committee)
54-60-03	Determine the standing committees that will receive the report from the Commissioner of Commerce on the Department of Commerce'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 the status of the program to establish and administer an unmanned aircraft systems test site in cooperation with UND, the Aeronautics Commission, Adjutant General, and private parties appointed by the Governor. (Government Finance 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 NDCC Chapter 54-65 on funds distributed to the center. (Budget Section)
57-20-04	Receive a report from the Tax Commissioner, by April 1 of each year, of a statewide report of property tax increase. (Budget Section)
57-39.8-02	Receive annual report from the governing body of the Standing Rock Sioux Tribe of any agreement under NDCC Chapter 57-39.8. (Budget Section)

NDCC Citation	Subject Matter (Committee)
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. (Information Technology 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 tribal governing bodies 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)
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 NDCC 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)

2011 Session Laws Citation	Subject Matter (Committee)
Chapter 1 § 6	Administer appropriation for legislative committee room renovations and improvements. (Legislative Procedure and Arrangements Committee)

2013 Session Laws Citation	Subject Matter (Committee)
Chapter 67 § 1	Approve conveyance of North Central Research Extension Center and Williston Research Extension Center property. (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 NDCC Section 57-51-15. (Budget Section)

2017 Session Laws Citation	Subject Matter (Committee)
Chapter 1 § 4	Receive a report from the Governor's office regarding the source, amount, and purpose of any additional income from federal or other funds received. (Budget Section)
Chapter 3 § 5	Receive a report from the Attorney General quarterly regarding all expenditures for litigation-related expenses from the Industrial Commission's litigation fund during the 2017-18 interim. (Budget Section)
Chapter 11 § 4	Receive a report from the Department of Human Services after June 30, 2018, regarding any transfers in excess of $50,000 made during the 2017-19 biennium between line items within each subdivision and between subdivisions. (Budget Section)
Chapter 19 § 3	Approve State Water Commission expenditure of funds that become available in the resources trust fund and the water development trust fund in excess of 2017-19 biennium appropriations. (Budget Section)
Chapter 19 § 5	Approve transfers within the water and atmospheric resources line item in the State Water Commission budget. (Budget Section)

Chapter 19 § 7	Approve the Garrison Diversion Conservancy District to change funding between designations for the Red River Valley Water Supply Project. (Budget Section)
Chapter 19 § 8	Receive quarterly progress reports from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project. (Water Topics Overview Committee)
Chapter 19 § 8	Receive and approve certification from the State Water Commission and the State Engineer that all items listed in subsection 1 of Section 8 of 2017 House Bill No. 1020 have been accomplished. (Budget Section)
Chapter 19 § 10	Approve a payment from the State Water Commission to the Bank of North Dakota for payment of a Western Area Water Supply Authority defaulted consolidation loan payment. (Budget Section)
Chapter 19 §§ 11,12	Receive a report from the Industrial Commission by June 1, 2018, on the results of the study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the Western Area Water Supply Authority and the timeline to complete the lease or sale. (Water Topics Overview Committee)
Chapter 24 § 3	Receive a report from the Department of Human Services during the 2017-18 interim, on the levels of funding provided for and spent on nursing home services and home- and community-based services by program during the 2015-17 and 2017-19 bienniums and shall provide recommendations on options to increase the number and level of services and funding provided for home- and community-based services for the 2019-21 biennium. (Human Services Committee)
Chapter 28 § 27	Approve any tuition rate increases over 4 percent by the State Board of Higher Education for the 2017-18 or 2018-19 academic years. (Budget Section)
Chapter 28 § 33	Receive a report from the State Board of Higher Education regarding the status of efforts to collaborate with Minnesota entities for research network purposes. (Higher Education Committee)
Chapter 28 § 37	Receive a report from the State Board of Higher Education during the 2017-18 interim regarding the status of inconsistencies in employee classifications and human resources reporting, employee leave policies, practices for awarding tuition waivers, and practices regarding the charging of student fees, including policies and procedures being developed to address the inconsistencies. (Higher Education Committee)
Chapter 28 § 38	Receive a report from the State Board of Higher Education during the 2017-18 interim regarding the total number of employee positions reduced at each institution, the number of administrative positions reduced at each institution, and whether any former administrative staff employees are still employed by the institution at a different position. (Higher Education Committee)
Chapter 29 § 16	Receive a report from the State Department of Health on the results of the independent review of the tobacco prevention and control plan's effectiveness and implementation. (Health Services Committee)
Chapter 33 § 4	Receive a report from the Governor by July 1, 2018, regarding the findings and recommendations from the study of operations of the Department of Financial Institutions and the Securities Department to determine the feasibility and desirability of combining the agencies into a single department. (Government Administration Committee)
Chapter 37 § 10	Receive a report from the Department of Transportation before July 1, 2018, regarding the results of the study on the manner in which the Department of Transportation provides snow and ice control services on the state highway system. (Government Finance Committee)
Chapter 37 § 11	Receive a report from the Department of Transportation before July 1, 2018, on the study of options to consolidate transportation facilities within Williams County and the Williston district headquarters. (Government Finance Committee)
Chapter 37 § 13	Receive a report by September 30, 2017, and September 30, 2018, regarding all fees charged by the Department of Transportation in comparison to the actual cost of providing the services for which the fee is charged. (Budget Section)
Chapter 37 § 14	Receive a report from the Department of Transportation and Information Technology Department by June 30, 2018, of the results of the study on benefits of allowing wireless telecommunication infrastructure within state highway rights of way and any requirements of allowing the installation may be in the public interest. (Government Finance Committee)
Chapter 38 § 12	Approve expenditures of up to $1.8 million for a Department of Trust Lands information technology project. (Budget Section)
Chapter 38 § 21	Receive a report from the Tax Department by September 30, 2018, regarding its study of the valuation of oil and gas as used to determine mineral royalty payments and tax liability. (Energy Development and Transmission Committee)
Chapter 39 § 29	Receive a report from the Industrial Commission by September 30, 2018, regarding the results and recommendations of the study of the feasibility of and appropriate jurisdiction for regulation of sediment studies and dredging operations from the beds of reservoirs. (Water Topics Overview Committee)
Chapter 39 § 30	Receive a report from the Industrial Commission by July 1, 2018, regarding the results and recommendations of the gain-sharing program study. (Government Finance Committee)
Chapter 40 § 13	Receive a report from the Department of Corrections and Rehabilitation regarding the results of its Youth Correctional Center study. (Budget Section)

Chapter 40 § 14	Receive a report from the Justice Reinvestment Oversight Committee before July 1, 2018, of the findings and recommendations of the study of implementation of justice reinvestment policies in the state and any legislation required to implement those recommendations. (Justice Reinvestment Committee)
Chapter 45 § 9	Receive a report from the Bank of North Dakota on the terms and conditions of the Western Area Water Supply Authority consolidation loan upon its completion. (Water Topics Overview Committee)
Chapter 45 § 15	Receive a report from the State Board of Agricultural Research and Education by March 31, 2018, regarding its findings and recommendations to increase the efficiency and effectiveness of the NDSU Extension Service. (Budget Section)
Chapter 52 § 3	Receive a report from the State Board of Higher Education during the 2017-18 interim regarding the status of the integrated carbon plant project at Valley City State University. (Budget Section)
Chapter 53 §§ 1, 2	Receive a report from the Attorney General during the 2017-18 interim on the status and results of the human trafficking victims treatment and support services grant program. (Judiciary Committee)
Chapter 108 § 20	Receive a report from the Department of Corrections and Rehabilitation and the Supreme Court regarding the progress of the justice reinvestment initiative. (Justice Reinvestment Committee)
Chapter 125 § 4	Receive a report from the Superintendent of Public Instruction annually during the 2017-19 biennium regarding the use of teacher loan forgiveness funds received under Senate Bill No. 2037, including the amount distributed, the number of eligible individuals receiving funds, the recruitment and retention of individuals participating in the program, the average starting salaries of individuals participating in the program, and the effectiveness of the program as determined under criteria developed by the Superintendent of Public Instruction. (Education Funding Committee)
Chapter 171 § 5	During the 2017-18 interim the State Department of Health shall include the findings and recommendations of the study on adding identified medical conditions to the definition of "debilitating medical condition" in its annual reports. (Judiciary Committee)
Chapter 208 § 2	Receive a report from the Department of Human Services before April 1, 2018, on the outcome of the Medicaid waiver study. (Human Services Committee)
Chapter 247 § 7	Approve a Bank of North Dakota loan to the Information Technology Department for the expenses of the statewide interoperable radio network. (Budget Section)
Chapter 247 § 7	Receive a report from the Information Technology Department on status updates regarding the implementation and progress of the statewide interoperable radio network. (Budget Section)
Chapter 251 § 2	Receive a report from the Industrial Commission by September 30, 2018, regarding the studies conducted under Section 2 of House Bill No. 1347. (Energy Development and Transmission Committee)
Chapter 251 § 3	Receive a report from the Energy and Environmental Research Center by September 30, 2018, regarding the results and recommendations of the pipeline leak detection study. (Natural Resources Committee)
Chapter 299 § 5	Receive a report during the 2017-18 interim from North Dakota Board of Social Work Examiners, Board of Addiction Counseling Examiners, Board of Counselor Examiners, and North Dakota Marriage and Family Therapy Licensure Board on the status of implementation of supervision and training requirements provided in 2017 Senate Bill No. 2033. (Health Services Committee)
Chapter 333 § 3	Receive a report from the Department of Human Services before September 1, 2018, regarding the status of the children's prevention and early intervention behavioral health services pilot project. (Health Services Committee)
Chapter 334 § 1	Receive a report from the Department of Human Services before August 1, 2018, regarding the outcome of the Medicaid fraud control unit feasibility and desirability study. (Human Services Committee)
Chapter 349 § 1	Receive a report from the Task Force on the Prevention of Sexual Abuse of Children with recommendations for state policy that would prevent child sexual abuse. (Judiciary Committee)
Chapter 360 § 5	Receive a report from the Task Force on Children's Behavioral Health on its findings and recommendations and any proposed legislation necessary to implement the recommendations. (Health Services Committee)
Chapter 479	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 public employee health insurance plan, including the feasibility and desirability of transitioning to a self-insurance plan. The study must include a review of the current plan and consideration of the costs and benefits of the current plan compared to the costs and benefits of a self-insurance plan.	Health Care Reform Review Committee

Responsibility	Interim Committee
Study state revenues and state revenue forecasts. The study must include monitoring state revenues and state economic activity, reviewing economic forecasting data and models, and reviewing and analyzing executive revenue forecasts and alternative revenue forecasts.	Legislative Revenue Advisory Committee
Study higher education finances and the overall financial stability of institutions under the control of the State Board of Higher Education. The study must include a review of the finances of each institution, including short- and long-term debt obligations, operating income margins, estimated future tuition income, institutional reserves, and anticipated future funding changes through the higher education funding formula.	Higher Education Committee
Monitor and review proposed federal changes to the federal Affordable Care Act.	Health Care Reform Review Committee
Study the state's emergency medical service (EMS) system, including the EMS state grant program and how the distribution of these grants affects services available in rural areas and including a review of the availability of EMS statewide, services that are considered "access critical," and funding available to support these services.	Government Administration Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Management for study during the 2017-18 interim under authority of NDCC 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
1012 § 35	Study the nursing facility rate components to determine the adequacy of reimbursement and evaluate the efficiency of nursing facility operations. The study must identify and review potential quality measures relating to nursing facilities and consider the feasibility and desirability of using quality measures as a component of reimbursement.
1015 § 36	Study the impacts of the 2015-17 budget allotments and the 2017-19 budget on research infrastructure at the institutions under the control of the State Board of Higher Education.
1251 § 1	Study the creation of an inmate housing construction program to provide inmates with housing construction vocational skills through the construction of homes to be made available for sale to low-income homebuyers. The study must include an analysis of the grants available to support the program, the ability to establish partnerships with private industry and apprentice opportunities with labor groups, and the ability to work with private industry to provide for the sale and transport of the completed homes.
1358 § 1	Study the use of open educational resources in the elementary and secondary school system. The study must include an analysis of potential cost-savings for school districts and the Department of Public Instruction; the availability of private sector partnerships that can aid in the development, adoption, implementation, and funding of open educational resources; and the steps necessary to establish North Dakota as a #GoOpen state with the United States Department of Education.
2002 § 7	Study fees charged by the judicial branch, including fees charged by the clerk of district court under NDCC Section 27-05.2-03.
2329 § 2	Study the feasibility and desirability of updating Chapter 43-30, the law relating to the regulation of private investigative and security services.

2019 NORTH DAKOTA LEGISLATIVE MANAGEMENT BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1026 - Soil Conservation District Supervisor Training. This bill requires ongoing training for soil conservation district supervisors. (Agriculture Committee)

House Bill No. 1027 - Technical Corrections Regarding the Every Student Succeeds Act. This bill makes technical corrections to North Dakota Century Code to change references from the No Child Left Behind Act to the Every Student Succeeds Act. (Education Policy Committee)

House Bill No. 1028 - Public Employees Retirement System Self- Insurance Health Plans. This bill provides Public Employees Retirement System self-insurance health plans are subject to regulation by the Insurance Department and establishes the parameters of this regulation; revises the requirements of these self-insurance health plans, including allowing for these plans when it is in the best interest of the state and its eligible employees and making stop-loss coverage optional; and authorizes the Bank of North Dakota to extend the Public Employees Retirement System a line of credit to help administer a self-insurance health plan. The bill also revises the contract renewal requirements for uniform group insurance health benefits, providing the Public Employees Retirement System may not renew the contract unless doing so best serves the interests of the state and the state's eligible employees. (Health Care Reform Review Committee)

House Bill No. 1029 - Higher Education Funding Formula Review Committee. This bill provides for a higher education funding formula review committee, composed of five North Dakota University System representatives and four legislators, to study the higher education funding formula during the 2019-20 interim. (Higher Education Committee)

House Bill No. 1030 - Higher Education Funding Formula Minimum Amount Payable. This bill extends the expiration date of Section 15-18.2-06 through June 30, 2021. The section establishes a minimum amount payable to an institution through the higher education funding formula. (Higher Education Committee)

House Bill No. 1031 - Student Financial Assistance Grants. This bill amends Section 15-62.4-03 to provide for an increase in the maximum grant award and funding available for needs-based scholarships. (Higher Education Committee)

House Bill No. 1032 - Services Payments for Elderly and Disabled Sliding Fee Schedule. This bill requires Department of Human Services (DHS) to establish and revise a sliding fee schedule biennially for the service payments for elderly and disabled (SPED) program. (Human Services Committee)

House Bill No. 1033 - Independent Home- and Community-Based Case Managers. This bill directs DHS to create a pilot program for independent home- and community-based services case managers for the SPED and expanded SPED programs. (Human Services Committee)

House Bill No. 1034 - Home- and Community-Based Services. This bill requires DHS to establish guidelines for long-term care services providers to deliver home- and community-based services. (Human Services Committee)

House Bill No. 1035 - Fiscal Impact Statements for Ballot Measures. This bill requires each measure on the ballot to be accompanied by its fiscal impact statement. (Initiated and Referred Measures Study Commission)

House Bill No. 1036 - Fiscal Impact Statements for Referred Measures. This bill requires the Legislative Council to coordinate the determination of estimated fiscal impacts for referred measures. (Initiated and Referred Measures Study Commission)

House Bill No. 1037 - Disclosure Requirements for Contributions to Measure Committees from Residents. This bill requires contributions to committees supporting or opposing ballot measures from residents to be reported with the same level of detail as contributions from nonresidents. (Initiated and Referred Measures Study Commission)

House Bill No. 1038 - Child Placing Agency Report Affidavit. This bill removes a requirement for a statement of affidavit confirming the information in the child-placing agency report is accurate in an adoption. (Judiciary Committee)

House Bill No. 1039 - Juvenile Culpability. The bill raises the age of culpability of a juvenile from 7 to 10 years old. (Justice Reinvestment Committee)

House Bill No. 1040 - Twenty-first Century Manufacturing Workforce Incentive. This bill creates a 21st century manufacturing workforce incentive that provides an income tax credit equal to a portion of the amount expended to automate a manufacturing process. (Taxation Committee)

House Bill No. 1041 - Homestead Tax Credit for Special Assessments. This bill increases the amount of the homestead tax credit for special assessments from $6,000 to $15,000 and ties the interest rate applied to the credit to a moving index. (Taxation 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 66th Legislative Assembly through September 30, 2021. (Budget Section)

House Concurrent Resolution No. 3002 - Distributed Ledger Technology and Blockchain Study. This resolution provides for a Legislative Management study of distributed ledger technology and blockchain for state government. The study is to include the potential benefits of distributed ledger technology and blockchain for state government, including an evaluation of the effects on government accounting and budgeting, decisionmaking, information technology authentication, records management, remote electronic voting, and other e-government services and applications, such as tax collection, land registry, distribution of benefits, digital currencies, and other potential benefits. (Information Technology Committee)

SENATE

Senate Bill No. 2025 - Stakeholder Meeting Regarding the Statewide Vision on Education. This bill requires the Superintendent of Public Instruction to facilitate an annual meeting of stakeholders regarding the statewide vision on education, and to require a collaborative report to the Legislative Management regarding the stakeholder strategic plans aligned to the vision. (Education Policy Committee)

Senate Bill No. 2026 - Mental Health Services Voucher Program. This bill establishes a voucher program for mental health services and appropriates $1,050,000 from the general fund to DHS for the program. (Health Services Committee)

Senate Bill No. 2027 - Definition of Brain Injury. This bill broadens the definition of brain injury. (Health Services Committee)

Senate Bill No. 2028 - Substance Abuse and Early Intervention Services. This bill provides a $600,000 general fund appropriation to DHS for behavioral health prevention and early intervention services, of which DHS must allocate $300,000 for substance abuse prevention and early intervention services and the remaining $300,000 for other mental health prevention and early intervention efforts. (Human Services Committee)

Senate Bill No. 2029 - Community Behavioral Health. This bill directs DHS to implement a community behavioral health program to provide services to individuals outside the correctional system who have serious behavioral health conditions. The bill provides a $7 million appropriation to DHS for the program, of which $5.25 million is from the general fund and $1. 75 million is from other funds. The bill also authorizes 6 full-time equivalent (FTE) positions for the program. (Human Services Committee)

Senate Bill No. 2030 - State Behavioral Health System. This bill appropriates $408,000 from the general fund to DHS to coordinate the implementation of recommendations of the Human Services Research Institute's study of the state's behavioral health system. The bill also authorizes 1.5 FTE positions to coordinate the implementation of recommendations. (Human Services Committee)

Senate Bill No. 2031 - Targeted Case Management. This bill provides an appropriation to DHS for targeted case management. The bill appropriates $12,196,834 from the general fund and $12,196,834 from other funds and authorizes 1 FTE position. (Human Services Committee)

Senate Bill No. 2032 - Peer Support Services Certification. This bill implements a peer support services certification program within DHS. The bill appropriates $275,000 from the general fund and $275,000 from other funds, and authorizes 1 FTE position for the program. (Human Services Committee)

Senate Bill No. 2033 - Ballot Measure Drafting Assistance. This bill allows the Legislative Council to provide drafting assistance to sponsoring committees pursuant to Legislative Management guidelines. (Initiated and Referred Measures Study Commission)

Senate Bill No. 2034 - Firearms and Weapons Provisions. This bill makes technical corrections to Title 62.1 and removes inconsistencies. (Judiciary Committee)

Senate Bill No. 2035 - Legal Notice and Publishing Requirements. The bill revises the top five public notice requirements of the over 140 public notices and shifts the notice requirements from the county extension agent to the commodity group holding an election. (Judiciary Committee)

Senate Bill No. 2036 - Constitutional and Statutory Revision. The bill makes technical corrections throughout Century Code. (Judiciary Committee)

Senate Bill No. 2037 - High-Level Radioactive Waste Disposal. This bill repeals Chapter 23-20.2; creates two new chapters of Century Code, one for high-level radioactive waste disposal and one for subsurface storage and retrieval of nonhydrocarbons; designates the Industrial Commission as the point of contact with the Department of Energy and other federal agencies; authorizes the Industrial Commission to regulate drilling, excavating, construction, operation, and onsite inspections; requires an exploration permit from the Industrial Commission before exploring for a high-level radioactive waste facility and a facility permit before operating a high-level radioactive waste facility; and creates a high-level radioactive waste advisory council to advise the Industrial Commission and the Legislative Assembly. (Natural Resources Committee)

Senate Bill No. 2038 - Energy Conversion Facilities. This bill corrects the codification issues caused by the conflict between House Bill No. 1144 (2017) and Senate Bill No. 2286 (2017) by incorporating the sections addressing gas or liquid transmission facilities incorrectly placed in Chapter 49-22 into Chapter 49-22.1, which governs gas or liquid facility siting. (Natural Resources Committee)

Senate Bill No. 2039 - Skilled Workforce Scholarship Program. This bill creates a skilled workforce scholarship program that provides grants to students enrolled in educational programs that relate to workforce areas in high demand. (Taxation Committee)

Senate Bill No. 2040 - Special Improvement District Protests. This bill excludes property owned by a political subdivision from consideration in protests against the formation of a special improvement district. (Taxation Committee)

Senate Bill No. 2041 - Park District Bonding. This bill allows park districts to issue bonds without an election but provides taxpayers with a formal protest period. (Taxation Committee)

Senate Bill No. 2042 - Oil and Gas Gross Production Tax Reporting. This bill eliminates the revenue and expenditure reporting requirements for schools and counties that receive oil and gas gross production tax allocations. (Taxation Committee)