

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### BUDGET COMMITTEE ON GOVERNMENT SERVICES

Tuesday, January 24, 2006  
Roughrider Room, State Capitol  
Bismarck Transition Center  
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Al Carlson, Randy Boehning, Ron Carlisle, Kari Conrad, Duane DeKrey, Eliot Glassheim, Bette B. Grande, James Kerzman, Joe Kroeber, Ralph Metcalf, Darrell D. Nottestad, Ken Svedjan, Blair Thoreson, Dave Weiler; Senators Aaron Krauter, Ed Kringstad, Elroy N. Lindaas, Stanley W. Lyson, Dave Nething

**Members absent:** Representatives Jeff Delzer, Glen Froseth, Alon C. Wieland; Senator Duaine C. Espegard

**Others present:** Gary Preszler, Land Department, Bismarck

Pam Sharp, Office of Management and Budget, Bismarck

John Paczkowski, State Water Commission, Bismarck

Leann K. Bertsch, Dave Krabbenhoft; Department of Corrections and Rehabilitation, Bismarck

John Olson, Pardon Board, Bismarck

Marcie Conmy-Fisher, Bismarck Transition Center, Bismarck

See attached appendix for additional persons present.

#### STATE-OWNED REAL ESTATE STUDY

The Legislative Council staff presented a memorandum entitled [State-Owned Real Estate](#). The Legislative Council staff said the memorandum represents the results of a survey of 38 state agencies and institutions that own land and buildings. Total state-owned land as reported by state agencies and institutions totals 1,057,333 acres with an estimated value of \$405.6 million.

The Legislative Council staff said the 1.1 million acres of state land comprises 2.4 percent of all land in North Dakota compared to federally owned land which totals 1.9 million acres, or 4.2 percent of all land in the state.

The Legislative Council staff said agencies and institutions own 1,820 buildings totaling 21.8 million square feet with a total estimated value of \$1,675,000,000. The Legislative Council staff said these agencies reported total debt on these buildings of \$207,500,000. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Carlson regarding the potential sale of land by the Land Department, Mr. Gary Preszler, Commissioner, Land Department, said the department is reviewing small tracts of land that it owns as part of state trust fund lands and that upon approval by the Board of University and School Lands, the land may be sold and any proceeds would be deposited into the trust fund that owns the land.

In response to a question from Representative Kerzman, Mr. Preszler said the state has sold 1.8 million acres of the 2.5 million acres originally granted to the state, leaving 700,000 acres; therefore, he said, much of the land has already been sold. He said the department provides 5 percent of any income earned on state lands to the county in which the land is located.

Representative Conrad suggested the Legislative Council staff be asked to prepare a bill draft for the committee to consider at a future meeting requiring the Office of Management and Budget (OMB) to maintain an inventory of state-owned assets. Chairman Carlson asked the Legislative Council staff to prepare the bill draft.

#### PERFORMANCE AND ACCOUNTABILITY SYSTEM PROJECT

Ms. Pam Sharp, Director, Office of Management and Budget, presented information on current performance measure information prepared by state agencies and whether selected agencies could participate in the government performance and accountability system pilot project. Ms. Sharp discussed the following agencies and the potential for involvement in a pilot project:

- Department of Veterans Affairs - Prefers not to participate in the pilot project because its strategic plan is not yet complete.
- Department of Human Services - Prefers not to participate due to resource and time constraints.
- Department of Transportation - Agrees to participate in the pilot project.
- Department of Commerce - May not be appropriate for the pilot project because it reports performance information to other interim committees.

- Parks and Recreation Department - Agrees to participate.
- Information Technology Department - May not be appropriate for the pilot project because it reports its performance information to the Information Technology Committee.
- Highway Patrol - Agrees to participate.

Ms. Sharp suggested the committee, in its decision to choose up to three agencies to participate in the pilot project, consider the Department of Transportation, Parks and Recreation Department, and Highway Patrol.

Ms. Sharp said during the last legislative session, OMB provided information to the Legislative Assembly on state agency performance measures to the extent available. She said OMB plans to provide similar information to the 2007 Legislative Assembly. Representative Carlson expressed his support for continuing to provide the performance measure information of state agencies to the extent available.

Representative Svedjan suggested that even though the Information Technology Department and the Department of Commerce report their performance information to other interim committees, it is important for these agencies to provide input into the development of the pilot project.

**It was moved by Representative Svedjan, seconded by Representative Weiler, and carried on a voice vote that the committee designate the Department of Transportation, Parks and Recreation Department, and Highway Patrol as participants in the government performance and accountability system pilot project and that the Information Technology Department and Department of Commerce be asked to provide information to the committee regarding their performance and accountability systems.**

Representative Grande asked the Department of Veterans Affairs report to the committee at its next meeting regarding the status of its strategic plan and performance measures. Chairman Carlson asked the Legislative Council staff to arrange for this report for the next meeting.

Chairman Carlson asked that the three agencies designated as part of the pilot project be invited to the next committee meeting to discuss their performance and accountability systems.

## **DEPARTMENT OF CORRECTIONS AND REHABILITATION STRATEGIC PLAN**

Mr. Bob Bennett, Assistant Attorney General, Attorney General's office, summarized North Dakota's minimum mandatory sentencing laws. Mr. Bennett provided information on the five major statutes providing for minimum mandatory sentences, including:

1. Armed offenders.
2. Violent offenders.
3. Offender registration.
4. Controlled substance (drug) offenders.

### 5. Motor vehicle violations.

A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Glassheim, Mr. Bennett said that from a law enforcement perspective, the current statutes providing for minimum mandatory sentences are appropriate.

Chairman Carlson asked the Department of Corrections and Rehabilitation to provide information to the committee at a future meeting of whether the prison population is increasing due to mandatory sentences.

Ms. Lea Ann Schneider, Assistant Attorney General, Attorney General's office, commented on North Dakota Century Code (NDCC) Section 54-40-08 which relates to the use of state buildings and facilities by political subdivisions and whether the state and a political subdivision may jointly own a newly constructed facility.

Ms. Schneider said NDCC Section 54-40-08 authorizes the use of a state building by a political subdivision. She said Chapter 54-40.3 provides for joint powers agreements among political subdivisions or between the state and a political subdivision. She said under this chapter, the state and a county could jointly construct a building.

Mr. Andy Mork, Missouri River Joint Water Board, provided information on the Missouri River bank stabilization and aquatic restoration and demonstration project proposed to be constructed on state land of the Missouri River Correctional Center. Mr. Mork expressed his support for the demonstration project. He said the project is important for the state and the Missouri River. He said there is concern with the amount of erosion and land loss that is occurring on state land near the Missouri River Correctional Center where the demonstration project would be built. In addition, he said, this erosion results in additional sediment being deposited in the river.

Mr. Mork said the water resource board has learned that \$250,000 of federal funds has been made available to the United States Army Corps of Engineers to plan and design the project.

Mr. Mork said the water resource board has concerns with the appraisal of the 985 acres of land comprising the Missouri River Correctional Center. He said the appraisal includes approximately 9,000 lineal feet of river frontage where the project would be located. He said the appraisal values the land at \$7,850,000 without the project and only \$1,818,750 with the project. He said the water resource board has concerns with conclusions of the appraisal, including:

1. The amount of land indicated as being unsuitable for development because it is either a wetland or a floodway.
2. The amount of area included in the floodplain.

Mr. Mork said the value of the land should be increased due to bank stabilization rather than decreased.

Mr. Mork expressed support for the project and asked for direction from the committee regarding whether the state is in support of continuing the development of the project, whether the land needed for the project will be made available by the state, and which entity will be responsible for administering the project at the local level. He said the State Water Commission is in support of the project.

Mr. John Paczkowski, State Water Commission, said there have been bank stabilization projects completed in other areas of the Missouri River as test projects from the Garrison Dam to south of Bismarck. He said private development may not occur in a floodway.

In response to a question from Representative DeKrey, Mr. Paczkowski said the federal government will provide 75 percent of the cost of the bank stabilization project with a 25 percent local match. He said the local match may be in kind; therefore, he said, the value of the land may be used as part of the local match.

Ms. Sandi Tabor, Deputy Attorney General, Attorney General's office, said the Attorney General's office would further research the issues involved in the project and provide a report to the committee at its next meeting. Chairman Carlson asked the Attorney General's office to include in its report the procedures involved in approving this type of project and the process involved in granting an easement on state land.

The Legislative Council staff distributed a letter from Dakota Appraisal Consulting relating to corrections to the appraisal made of the Missouri River Correctional Center land. The letter indicates the value of the land without the river bank stabilization easement has a value of \$7,850,000 and with the river bank stabilization easement, the revised value is estimated to be \$1,962,500. A copy of the letter is on file in the Legislative Council office.

Ms. Sandi Tabor, Bismarck City Commissioner, provided information on future land developments near Department of Corrections and Rehabilitation property in Bismarck. Ms. Tabor said many private companies are interested in industrial sites in the Bismarck area; however, she said, industrial land is becoming less available. She said the Penitentiary land located in southeast Bismarck includes both industrial and commercial property. She said the Northern Plains Commerce Center, which is opening in 2006 near the airport, will result in more potential development in this area and the land becoming more valuable. She said the city of Bismarck would not be interested in purchasing the land; however, she anticipates many private companies may be interested in acquiring this land at some future point.

Representative Carlisle said the Penitentiary land in this area includes about 90 acres.

The legislative budget analyst and auditor presented a memorandum entitled [Department of Corrections and Rehabilitation Study Status - Summary](#). He said the memorandum lists the

requirements of the study of the Department of Corrections and Rehabilitation as included in Section 12 of Senate Bill No. 2015 and summarizes the major information received by the committee to date.

Chairman Carlson asked the Legislative Council staff to arrange for private companies involved in contracting with states for correctional services to comment to the committee at a future meeting regarding options North Dakota may consider for addressing its incarceration and facility needs.

Representative Svedjan suggested the committee receive information on the costs and benefits of various options available for addressing the state's correctional and incarceration needs.

Representative Weiler asked for the process involved in obtaining an appraisal of certain lands. The legislative budget analyst and auditor said during the 2003-04 interim, the Department of Corrections and Rehabilitation paid for the appraisal. He said no specific funds are available in the Legislative Council budget for land appraisals.

Senator Krauter suggested that federal funds may be available to address some of North Dakota's correctional needs. Chairman Carlson asked the Legislative Council staff to contact the Department of Corrections and Rehabilitation regarding the availability of federal funds.

The committee recessed for lunch at 12:00 noon and reconvened at 1:00 p.m.

Mr. Dave Krabbenhoft, Director, Fiscal Affairs, Department of Corrections and Rehabilitation, presented information on the number of inmates by location. Mr. Krabbenhoft said the number of female inmates has averaged 152 for the 2005-07 biennium to date, 16 more than the estimated average number of female inmates for the same period of 136. Mr. Krabbenhoft said male inmates have averaged 1,238 for the 2005-07 biennium to date, 5 fewer than the estimated average population of 1,243. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Krauter, Mr. Tim Schuetzle, Prisons Division Director, Department of Corrections and Rehabilitation, said North Dakota is currently housing 48 inmates in a private prison facility in Appleton, Minnesota. He said the department has been informed that due to an increased need to house Minnesota inmates in the facility, the North Dakota inmates will need to be moved from Appleton by the end of March. He said the private organization also operates a similar facility in Colorado which would accept 27 of the 48 inmates. He said the department will have additional transition beds available in April and by July an additional 20 beds will be added at the James River Correctional Center. If additional beds are needed, he said, the department could consider housing inmates in private facilities in Oklahoma or Texas.

Mr. Krabbenhoft presented information on the amount of medical expenses that are dental-related. He said for the period July 2003 through

November 2005, dental-related expenses have totaled \$357,000 at the State Penitentiary and \$139,000 at the James River Correctional Center. Mr. Krabbenhoft said the department has now hired its own dentist which he anticipates will reduce the dental-related costs. A copy of the report is on file in the Legislative Council office.

Ms. Leann K. Bertsch, Director, Department of Corrections and Rehabilitation, distributed a map of the 90 acres comprising the State Penitentiary and adjacent land. She said other agencies using this land include the State Department of Health, Crime Laboratory of the Attorney General's office, State Water Commission, Game and Fish Department, and Roughrider Industries.

Ms. Bertsch said it is premature to discuss priority budget needs for the 2007-09 biennium. She said the department is just beginning its strategic planning process for the next biennium and will update the committee as budget developments continue. She provided a schedule showing budget request items of the 2005-07 biennium. She said many of the items that were not approved for the current biennium will be a priority for the 2007-09 biennium.

Chairman Carlson asked the department to continue to update the committee at each meeting on the development of its budget for the next biennium.

Mr. Warren Emmer, Director, Field Services Division, Department of Corrections and Rehabilitation, presented information regarding the impact of accelerating parole for certain prison inmates. He said the division currently supervises 298 parolees compared to 117 in December 2001. He said the division is able to supervise more parolees because the department has:

1. Improved case planning.
2. Increased the treatment planning available.
3. Developed specialized supervision for parolees.
4. Enhanced transition programming available.

A copy of the report is on file in the Legislative Council office.

Mr. John Olson, Chairman, Parole Board, commented on the practices of the board. Mr. Olson said the Parole Board is comprised of six members appointed by the Governor.

Mr. Olson said the board bases its paroling decisions on:

1. Public safety.
2. Evidence-based programming and decisionmaking.
3. Transitional planning and coordination.
4. Population management.
5. Financial efficiency.

Mr. Olson said transitional facilities are currently available only in Bismarck and Fargo. He suggested expanding transitional services to other communities across the state.

Mr. Olson said the majority of female inmates are involved primarily in chemical or property violations; therefore, he said, they are minimal risk offenders,

many of whom could be served in treatment programs.

In response to a question from Representative Carlson, Mr. Olson said more individuals would be approved for parole if more transition beds were available in the state.

In response to a question from Senator Nething, Mr. Olson said that 80 percent of parole violators are the result of technical violations which could be addressed by returning the individual to a transition facility rather than the State Penitentiary.

Ms. Karlene Fine, North Dakota Building Authority, commented on the amount of the state's outstanding debt, the general fund lease payment limit, refinancing options available and related prepayment penalties, and the amount of new bonds that may be issued in the 2007-09 biennium.

Ms. Fine distributed a schedule defining general obligation bonds, appropriation bonds, moral obligation bonds, and revenue bonds.

Ms. Fine said the Legislative Assembly has established a maximum amount of 10 percent of one cent of sales and use and motor vehicle excise tax collections that may be spent for Building Authority debt service. Using this limit to calculate the amount of bonds that may be issued by the 2007 Legislative Assembly, she said, it is projected that \$2.7 million of additional debt service may be incurred and still remain within the limit. She said this would allow for approximately \$25 million of new state bonding projects.

Ms. Fine said the Building Authority's financial advisor has reviewed all outstanding bond issues and suggested three for refunding. She said the Industrial Commission authorized the refunding of these issues and anticipates savings of approximately \$700,000. She said this refunding will allow additional bonding to be approved by the 2007 Legislative Assembly and still remain within the limit. She said it is estimated that total bonding of \$31 million rather than \$25 million may be approved by the 2007 Legislative Assembly after reflecting the projected savings from the refunding. A copy of the report is on file in the Legislative Council office.

Mr. Terry Traynor, North Dakota Association of Counties, commented on correctional issues of county facilities.

Mr. Traynor said county facilities provide federal prisoners housing and meals, intake medical screening, and intake medical assessments within their daily rate charged to the federal government. He said counties charge the federal government additionally for dental and medical care costs.

Mr. Traynor provided information on expansions of county jail facilities. Mr. Traynor said seven counties have either begun or are in the process of developing expansion projects for their jail facilities. He said these expansions may result in 454 new prison beds across the state. He said these new jails will all be Class I facilities.

Mr. Traynor presented information on county concerns relating to requirements of the Nurse Practices Act and regulations relating to medication management within jails. Mr. Traynor said the Nurse Practices Act and related regulations require any correctional officer that dispenses prescription drugs to inmates receive Nursing Board-approved training. He said the dispensing of the drugs must be supervised by a nurse and, in some instances, these regulations also apply to over-the-counter medications. Mr. Traynor said although most Class I facilities already employ medical staff, a few Class I facilities as well as Class II and Class III facilities are concerned with the additional costs required to comply with these regulations. Mr. Traynor cited examples of other entities, such as schools which distribute medications to children which are not required to comply with these requirements. A copy of the report is on file in the Legislative Council office.

Senator Nething suggested the committee have a bill draft prepared exempting Class II and Class III prison facilities from requirements relating to the dispensing of over-the-counter medications. Chairman Carlson asked the Legislative Council staff to prepare a bill draft for the committee's consideration.

Representative Carlson suggested the state and counties collaborate to identify potential prison beds that could be made available to state prisoners before these prison expansions are completed.

Chairman Carlson asked Mr. Traynor to provide additional information to the committee at its next meeting regarding the possibilities of housing additional state prisoners in expanded county facilities and what changes in reimbursement or other state requirements should be made in order to allow for additional beds in county facilities to be made available for state prisoners.

Senator Lyson suggested that state representatives meet with county representatives to develop options and proposals for allowing more state inmates to be housed in county facilities.

Due to time constraints, Chairman Carlson postponed the presentations of the bistate authority memorandums until the next meeting.

The committee traveled to the Bismarck Transition Center for a presentation and tour.

Ms. Marcie Conmy-Fisher, Administrator, Bismarck Transition Center, said the center is a community-based residential correctional facility providing an alternative to direct release from correctional institutions for selected offenders. She said the center also serves as an alternative to eligible nonviolent offenders. She said the center currently

has a capacity of 63 beds. She said the center is currently expanding its facility to provide an additional 88 beds--48 of which will be designated for state-referred offenders and the remaining 40 for city and county offenders. She said the center is owned by a not-for-profit organization based in Butte, Montana.

Ms. Conmy-Fisher said offenders eligible to be housed at the center include:

1. Offenders committed to the custody of the Department of Corrections and Rehabilitation.
2. Offenders approaching release from Department of Corrections and Rehabilitation facilities.
3. Offenders who have been placed on probation but have been court-ordered to a more structured supervision.
4. Offenders who are parole violators who require less restriction.
5. Offenders referred by cities and counties for placement in the work-release component of the facility.

Ms. Conmy-Fisher said the maximum length of stay for individuals at the center is one year; however, extensions may be granted.

Ms. Conmy-Fisher said the current daily rate for the inmates at the facility is \$50 per day paid by the Department of Corrections and Rehabilitation. In addition, she said, each resident is charged \$13 per day for room and board.

Ms. Conmy-Fisher said the center has been operating in Bismarck for three and one-half years and has served 565 individuals. She said the recidivism rate for individuals completing the program is 17 percent.

Chairman Carlson announced the next committee meeting is tentatively scheduled for Thursday, February 23, 2006, in Bismarck.

The committee conducted a tour of the transition center and adjourned subject to the call of the chair at 4:10 p.m.

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Allen H. Knudson  
Assistant Legislative Budget Analyst and Auditor

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Jim W. Smith  
Legislative Budget Analyst and Auditor

[ATTACH:1](#)