

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

BUDGET AND FINANCE COMMITTEE

Tuesday, September 23, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

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

Members present: Representatives Al Carlson, Ole Aarsvold, Merle Boucher, Jeff Delzer, Bob Skarphol, Ken Svedjan, Clark Williams; Senators Randel Christmann, Tony Grindberg, Ray Holmberg, Elroy N. Lindaas, David O'Connell, Larry J. Robinson, Bob Stenehjem

Members absent: Representatives Rick Berg, Bob Martinson

Others present: Jim W. Smith, Legislative Council, Bismarck

See attached [appendix](#) for additional persons present.

It was moved by Senator Grindberg, seconded by Senator Robinson, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

STATUS OF GENERAL FUND

Ms. Pam Sharp, Director, Office of Management and Budget (OMB), presented a report on the status of the general fund, including oil and gas tax distributions to local governments. A copy of the report is on file in the Legislative Council office.

Ms. Sharp presented the following schedule showing the status of the general fund for the 2007-09 biennium as of August 31, 2008, and reflecting the July 2008 revised revenue forecast for the remainder of the biennium:

| | |
|----------------------------------|-----------------|
| July 1, 2007, balance | \$295,541,176 |
| Estimated revenues | 2,612,741,314 |
| Estimated available funds | \$2,908,282,490 |
| Appropriations | (2,461,973,956) |
| Estimated June 30, 2009, balance | \$446,308,534 |

Ms. Sharp presented the following schedule showing the status of the permanent oil tax trust fund for the 2007-09 biennium as of August 31, 2008, and reflecting the July 2008 revised revenue forecast for the remainder of the biennium:

| | |
|----------------------------------|---------------|
| July 1, 2007, balance | \$143,270,662 |
| Estimated revenues | 634,030,335 |
| Estimated available funds | \$777,300,997 |
| Appropriations and transfers | (145,716,541) |
| Estimated June 30, 2009, balance | \$631,584,456 |

Compared to the original legislative revenue forecast for the 2007-09 biennium through August 2008, Ms. Sharp said general fund revenues have exceeded estimates by \$218.7 million or 16.6 percent. She said major positive variances relate to individual and corporate income tax categories.

Ms. Sharp presented a schedule of oil and gas tax and mineral royalty allocations to cities and counties for fiscal years 2004 through 2008 and for fiscal year 2009 through September 22, 2008. She said total allocations for fiscal year 2008 totaled \$40.8 million, \$13.2 million more than the \$27.6 million allocated for fiscal year 2007.

Representative Skarphol asked for information on oil prices, production, and tax collections for July 2008. Ms. Sharp said OMB would provide that information.

Senator Christmann asked for information on outstanding bonds of the state, including information on the amount of debt that has been reduced during the 2007-09 biennium. Senator Holmberg suggested receiving information on outstanding special assessment balances of state agencies. Chairman Carlson asked OMB to provide for the committee at its next meeting information on the state's outstanding debt and related general fund payments due during the 2007-09 and 2009-11 bienniums, special assessment balances outstanding and payments due during the 2009-11 biennium, and opportunities the state may have to prepay outstanding debt and special assessment balances during the 2009-11 biennium.

2009-11 BIENNIUM BUDGET INFORMATION

The Legislative Council staff presented a memorandum entitled [Authorized Number of Full-Time Equivalent Positions - Consideration of Inclusion in Appropriation Bills](#). The Legislative Council staff said based on a request at an earlier committee meeting, the memorandum includes examples of appropriation bills that identify the number of authorized full-time equivalent (FTE) positions for each agency within the bill. The Legislative Council staff said the examples include an alternative appropriation bill format that identifies an agency's base level funding, adjustments or enhancements, and legislative appropriation within one section of the bill using a three-column format as well as the current

appropriation bill format utilizing three sections of the bill. The Legislative Council staff reviewed the current process of authorizing the number of FTE positions for each agency and the Emergency Commission's role in authorizing additional FTE positions during the interim. The Legislative Council staff said in order for the current Emergency Commission process to continue, the Emergency Commission would need specific statutory authority to approve additional FTE positions.

Ms. Sheila Peterson, Fiscal Management Director, Office of Management and Budget, commented on the proposed appropriation bill changes. She said OMB supports the three-column format for providing agency appropriations within one section of the appropriation bill. She suggested that if FTE positions are included in agency appropriation bills, the number be identified for each agency in total and not identified for each division of an agency. She also suggested the committee provide the Emergency Commission the additional statutory authority needed to continue authorizing additional FTE positions during the interim.

Senator Holmberg expressed support for the three-column appropriation bill format and including the FTE positions in the appropriation bill; however, he said, agencies should have flexibility to shift FTE positions within their agencies.

Representative Delzer suggested that if the committee considers a bill draft to authorize the Emergency Commission to authorize additional FTE positions during the interim, Budget Section approval should be required for any additional FTE positions.

It was moved by Representative Delzer, seconded by Senator Holmberg, and carried on a roll call vote that the committee recommend, pursuant to North Dakota Century Code (NDCC) Section 54-44.1-07 relating to the form of the budget data, the Budget Section request the Office of Management and Budget to prepare the appropriation bills for introduction to the 2009 Legislative Assembly in a format that provides:

- **Base level funding, adjustments or enhancements, and the appropriation for each agency in a single section using a three-column format.**
- **The number of FTE positions in total for each agency shown for the base level, adjustments or enhancements, and the authorized (appropriation) level.**

Representatives Carlson, Aarsvold, Boucher, Delzer, Skarphol, Svedjan, and Williams and Senators Christmann, Grindberg, Holmberg, Lindaas, O'Connell, Robinson, and Stenehjem voted "aye." No negative votes were cast.

Ms. Sharp provided information relating to the 2009-11 biennium budget, including the number of agency budget requests submitted to date, estimated ongoing and one-time revenues and related general fund transfers, cost-to-continue items, major anticipated appropriations, major initiatives that may

be considered as part of the executive budget, potential state government efficiencies being identified as part of the budget development process, and potential options for use of funding in the permanent oil tax trust fund.

Ms. Sharp said OMB has granted extensions until October 15 for a number of state agency budgets. To date, she said, OMB has held 14 agency budget hearings. She presented a schedule identifying anticipated revenues for the 2009-11 biennium, including \$2.735 billion of ongoing general fund revenues and \$666 million of revenues to the permanent oil tax trust fund. She said this information is based on OMB's July 2008 preliminary forecast.

Ms. Sharp presented a schedule identifying for each agency 2009-11 preliminary budget limits, including adjustments for one-time funding, authorized carryover, bond payments, cost-to-continue current services, and phased-in programs.

Ms. Sharp said major initiatives being considered in the development of the executive budget include funding priorities, reserves, and tax relief. She said the Governor has discussed providing additional higher education tuition assistance of \$34 million, providing \$300 million of property tax relief, \$100 million of additional school funding, and \$100 million of income tax relief.

Ms. Sharp said the executive budget development process is not yet complete so potential state government efficiencies and options for use of funding in the permanent oil tax trust fund have not yet been identified. A copy of the report is on file in the Legislative Council office.

Representative Carlson asked for OMB's estimate of cost-to-continue items of state agencies. Ms. Sharp said because each agency is unique, it is difficult to identify a specific percentage increase for cost-to-continue items that would be applicable to all agencies.

Representative Skarphol suggested OMB provide a schedule summarizing major cost components of agency budgets to assist the Legislative Assembly in evaluating state agency budgets.

The Legislative Council staff presented a memorandum entitled [Preliminary Outlook - North Dakota 2009-11 Biennium General Fund Budget](#). The Legislative Council staff said the memorandum provides preliminary information on general fund ongoing and one-time revenues and expenditures anticipated for the 2009-11 biennium. The Legislative Council staff said the memorandum also identifies the estimated fiscal effect for the 2009-11 biennium on the general fund if initiated measure No. 1 relating to the creation of a constitutional permanent oil tax trust fund and measure No. 2 relating to a reduction of individual and corporate income tax rates are approved in the November 2008 general election.

Senator Holmberg said the information included in the report should be considered only for discussion purposes and is not an indication of amounts the

2009 Legislative Assembly may approve for the 2009-11 biennium.

Representative Boucher suggested the committee receive information on major special funds, including potential funds that may be available for the 2009-11 biennium. Chairman Carlson asked the Legislative Council staff to provide the committee with information on amounts that may be available in major special funds during the 2009-11 biennium.

Mr. Eric Hardmeyer, President, Bank of North Dakota, provided information regarding potential amounts that may be available for transfer to the general fund from the Bank of North Dakota for the 2009-11 biennium. Mr. Hardmeyer said for calendar year 2007, the net income of the Bank was \$51,086,000 and the Bank's leverage ratio was 7.19 percent. He said the Bank's goal is have a leverage ratio of at least 8 percent. Mr. Hardmeyer said the Bank is anticipating future net income as follows:

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| 2008 | \$57 million |
| 2009 | \$55 million |
| 2010 | \$55 million |
| 2011 | \$55 million |

Mr. Hardmeyer said if the 2009 Legislative Assembly transfers \$60 million of Bank of North Dakota profits to the general fund during the 2009-11 biennium, this amount would be approximately 55 percent of the Bank's projected earnings during the biennium. He said continuing to transfer \$60 million of profits per biennium will allow for capital growth of \$50 million to provide for nearly \$300 million in capital and a leverage ratio of nearly 8 percent at the end of the 2009-11 biennium. A copy of the report is on file in the Legislative Council office.

Mr. Vance Taylor, General Manager, Mill and Elevator, provided information regarding potential amounts that may be available for transfer to the general fund during the 2009-11 biennium. Mr. Taylor said from July 1999 through June 2007, the mill earned profits of \$28.9 million, of which \$19 million was transferred to the general fund. For the 2007-09 biennium, he said, the Legislative Assembly has required a transfer of \$5 million from the mill's profits to the general fund. For fiscal year 2008, he said, the mill experienced a net loss of \$821,000 due to record high grain prices, volatile basis levels, and futures market aberrations. He said these negative market conditions continued to affect profits for the first quarter of 2009; however, he said, if market conditions continue to stabilize 2007-09 biennium profits are anticipated to be at a break-even level. For the 2009-11 biennium, he said, the mill anticipates profits to return to a more normal level of approximately \$7.2 million, which is the average of the last four bienniums. A copy of the report is on file in the Legislative Council office.

Representative Boucher suggested the Legislative Assembly consider allowing the Bank of North Dakota or the Mill and Elevator flexibility in transferring funds

to the general fund based on the state's need for the funds and unique circumstances affecting the Bank or the mill.

In response to a question from Representative Carlson, Mr. Taylor said the Mill and Elevator is authorized a line of credit at the Bank of North Dakota of up to \$75 million.

In response to a question from Representative Skarphol, Mr. Taylor said he would provide to the committee the current estimated value of the Mill and Elevator.

Ms. Karlene Fine, Executive Director, Industrial Commission, provided information regarding potential amounts that may be available for transfer to the general fund from the student loan trust fund during the 2009-11 biennium. She said for the period July 2001 through June 2007, the student loan trust has transferred \$44.4 million to the general fund. In addition, she said, the 2007 Legislative Assembly authorized transfers of \$523,380 to the State Board of Higher Education for providing funding for veterinary students attending Kansas State University. For the 2007-09 biennium, she said, the trust anticipates income of approximately \$3 million compared to a \$2.4 million estimate for the 2009-11 biennium. She said the reduction is due to the student loan portfolio declining as students repay their loans. A copy of the report is on file in the Legislative Council office.

Mr. Gary Preszler, Commissioner, Land Department, provided information on potential amounts that may be available for transfer from the lands and minerals trust fund to the general fund during the 2009-11 biennium. He said the lands and minerals trust fund consists of over 700,000 mineral acres formerly owned by the Bank of North Dakota and the State Treasurer and the minerals located under navigable rivers and lakes. He said the trust currently receives oil and gas royalties from over 270 producing wells. Oil and gas leases are offered through auctions each quarter. In addition, he said, the trust receives royalties and lease bonus payments from mining of coal, sand, and gravel. He said current projections indicate that the lands and minerals trust fund will have a \$16.8 million June 30, 2009, balance and anticipated revenues of over \$24 million for the 2009-11 biennium. He said based on these projections, an estimated \$39 million could be transferred to the general fund during the 2009-11 biennium resulting in a \$1 million ending balance for the fund on June 30, 2011. A copy of the report is on file in the Legislative Council office.

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

AGENCY BUDGET INFORMATION

Ms. Brenda M. Weisz, Chief Financial Officer, Department of Human Services, provided information regarding the status of the department's 2007-09 biennium budget and information on its 2009-11 biennium budget request. She said the only major program change affecting the department's 2007-09

biennium budget is the increase in eligibility from 140 percent to 150 percent of poverty for the children's health insurance program effective October 1, 2008.

Ms. Weisz presented a schedule showing, by major program, anticipated expenditures compared to appropriated amounts for the 2007-09 biennium. In total, she said, the department is anticipating unspent general fund appropriation authority of \$3.3 million for the 2007-09 biennium.

Ms. Weisz said the 2007 Legislative Assembly authorized the department to obtain a loan of up to \$3.5 million from the Bank of North Dakota for providing developmental disabilities services grants. At the present time, she anticipates the department will need to obtain a loan of \$1 million to provide these services for the biennium.

Ms. Weisz reported on the status of the Medicaid management information system computer project. She said the 2007 Legislative Assembly appropriated \$3.6 million for the project. She said although the project has experienced delays, she does not anticipate the project to exceed the appropriated amount.

Mr. Alex Schweitzer, Superintendent, Department of Human Services institutions, provided an update on capital projects of the State Hospital and Developmental Center. He said the 2007 Legislative Assembly appropriated \$3.1 million from the general fund for construction of a high security addition to the GM Building on the campus of the State Hospital to provide for an expansion of the State Hospital's secure services program. He said because admissions to the secure services unit have been less than anticipated and because bids for the construction project were \$5.2 million, \$2.1 million more than appropriated, the department and OMB are planning to use the \$3.1 million for other capital projects that were delayed or deferred because of cost increases or new needs. He said the department is planning to use the funds for:

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|---|--------------------|
| New security fence | \$307,042 |
| 16 West building improvements | 326,420 |
| Flooring replacement | 54,976 |
| Sewer pipe repairs | 31,730 |
| Increased costs of the electrical distribution system | 1,211,504 |
| Employees Building improvements | 675,000 |
| Paint booth | 49,500 |
| Architectural and engineering costs | 233,427 |
| Total | \$2,889,599 |

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

Representative Delzer asked whether legislative approval is needed to change the use of these funds. The Legislative Council staff said staff would review statutory provisions and report to the Budget Section chairman before the Budget Section meets on Thursday, September 25, 2008.

Mr. Dave Krabbenhoft, Department of Corrections and Rehabilitation, provided information on the status of the department's 2007-09 biennium budget and on

the department's 2009-11 biennium budget request. He said for the 2007-09 biennium to date, the number of male inmates has averaged 1,288, two fewer than the estimated number of 1,290. For female inmates, he said, the average number to date is 151, 60 fewer than the estimate of 211. Because the actual number of inmates has been less than projected, he said, the department is currently anticipating a small amount of unspent general fund appropriation authority for the 2007-09 biennium.

Regarding the 2009-11 biennium budget request, Mr. Krabbenhoft said the department has not yet submitted its budget request and has been granted an extension by OMB until October 15. He said the department is currently estimating an average of 1,354 male inmates for the 2009-11 biennium, which is a 5 percent increase over the average inmate population to date during the 2007-09 biennium. He said the department is estimating an average of 164 female inmates for the 2009-11 biennium, which is an 8.6 percent increase over the average number of female inmates to date during the 2007-09 biennium. He said for the 2009-11 biennium budget request, the priorities of the department are to provide adequate funding for its employees and to obtain funding for remodeling and expanding the State Penitentiary as recommended by the Legislative Council's interim Correctional Facility Review Committee. A copy of the report is on file in the Legislative Council office.

Mr. Dale Frink, State Engineer, State Water Commission, provided information regarding anticipated uses of additional resources trust fund revenues available for the 2007-09 biennium and information on the commission's 2009-11 biennium budget request. He said the State Water Commission has not yet completed its 2009-11 biennium budget request. He said the department anticipates an unallocated balance in the resources trust fund on June 30, 2009, of approximately \$20 million resulting in approximately \$120 million for new water projects during the 2009-11 biennium.

Mr. Frink said the State Water Commission has \$87,690,000 of water development trust fund bond principal outstanding. He said the 2009-11 biennium bond payments associated with these bonds total \$16,866,625. In addition, he said, the State Water Commission has \$17,291,000 of Southwest Pipeline Project bonds outstanding requiring 2009-11 biennium payments of \$2,391,375. He said these payments are made by the Southwest Water Authority from revenue generated by the Southwest Pipeline Project. He said the State Water Commission's total outstanding bonds are \$105 million. A copy of the report is on file in the Legislative Council office.

Representative Delzer asked that the committee receive information at its next meeting on the status of outstanding bonds of the state and options for retiring the bonds early. Chairman Carlson asked the Legislative Council staff to arrange for OMB to present this information to the committee at its next meeting.

Ms. Dorette Kerian, Director of Information and Technology Systems and Services, North Dakota University System, provided information on the Northern Tier Network. She said NDCC Section 15-10-45 provides for the uses of the Northern Tier Network. She said while provisions of the Century Code section include the use of the Northern Tier Network for educational purposes, questions have arisen as to who may use it and for what purposes. She said there are significant advantages to the state of allowing full use of the Northern Tier Network in support of elementary and secondary and higher education in North Dakota. She said allowing expanded use of the Northern Tier Network by the University System and elementary and secondary education could reduce bandwidth growth and traditional Internet-related costs for these entities. A copy of the report is on file in the Legislative Council office.

Mr. Kent Blickensderfer, Qwest Corporation, commented on the use of the Northern Tier Network by nonuniversity entities. He said during past legislative sessions, Qwest, along with the North Dakota Association of Telecommunications Cooperatives, other telecommunications companies, the Governor, and the Legislative Assembly, agreed that the state should not compete in the private telecommunications business. He expressed concern that the University System, through the Northern Tier Network, is requesting changes that will allow a state entity to compete with private telecommunications companies. He said NDCC Section 15-10-45, which restricts the state from competing with private providers, should not be changed. A copy of the report is on file in the Legislative Council office.

Senator Grindberg asked the Legislative Council to provide information on companies that have received grants or hardware from the Northern Tier Network.

Mr. David Crothers, North Dakota Association of Telecommunications Cooperatives, commented on the Northern Tier Network. He said the association opposes the University System's proposed changes to NDCC Section 15-10-45 relating to competition with private industry. He said current statutory provisions limit the use of the Northern Tier Network by higher education to research purposes only. He said the 2007 Legislative Assembly provided funding for the

Northern Tier Network but recognized that parameters must be established to ensure that the state of North Dakota would not enter the telecommunications business or become a competitor to private providers. He said the University System is proposing to remove these restrictions and allow the Northern Tier Network to carry information previously provided by private telecommunications companies. A copy of the report is on file in the Legislative Council office.

Ms. Cathy Forsch, Director of Operations, Tax Department, provided information on the department's "Gentax" computer system, including actual return on investment compared to estimates made as part of the original project plan. She said the original estimates of additional state revenue resulting from implementation of the "Gentax" computer system were \$2.5 million per year. She said the Tax Department through June 2008 has realized revenue increases of \$7.7 million resulting from implementation of the system. A copy of the report is on file in the Legislative Council office.

Chairman Carlson announced the next committee meeting is tentatively scheduled for Tuesday, October 21, 2008, and said the committee will be reviewing potential total available revenue for the 2009-11 biennium and potential spending levels for the 2009-11 biennium to consider as recommendations to forward to the Legislative Council.

Representative Skarphol asked whether there are other cost-of-living indexes that should be reviewed when considering funding for certain state agencies. He said the Higher Education Committee has been informed that a higher education cost adjustment (HECA) index is more appropriate for calculating cost-of-living increases relating to higher education. He said the HECA index is generally a higher percentage than the consumer price index.

The committee adjourned subject to the call of the chair at 3:45 p.m.

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:1