

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CORRECTIONAL FACILITY REVIEW COMMITTEE

Tuesday, June 12, 2007
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Chet Pollert, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives Chet Pollert, Ralph Metcalf, Alon Wieland; Senators Tony Grindberg, David O'Connell, Bob Stenehjem

Others present: See attached [appendix](#)

RULES OF OPERATION AND PROCEDURE

At the request of Chairman Pollert, the legislative budget analyst and auditor reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#).

Chairman Pollert reviewed the responsibilities assigned to the Correctional Facility Review Committee for the 2007-08 interim. He said the responsibilities include developing three correctional facility concepts for consideration in addressing the needs of the Department of Corrections and Rehabilitation.

CORRECTIONAL FACILITY NEEDS

The Legislative Council staff presented a memorandum entitled [Correctional Facility Needs - Background Memorandum](#) relating to the committee's responsibilities, as directed by Section 10 of 2007 House Bill No. 1015, to address the immediate and future needs of the State Penitentiary. The committee, in addressing the Penitentiary needs, is to engage consultant and architectural services for the development of the following three correctional facility concepts:

1. The construction of a new correctional facility on the existing State Penitentiary site;
2. The construction of a new correctional facility at a site other than the existing State Penitentiary site; and
3. The remodeling of the existing State Penitentiary.

The Legislative Council staff said the concepts developed by the consultant must:

1. Include a master plan, staffing plan, a cost-benefit analysis, and project cost estimates;
2. Be based upon housing a population of approximately 900 to 1,000 inmates;
3. Include options for expansion;

4. Take into consideration the transfer of the inmates of the Missouri River Correctional Center to the new or remodeled facility; and

5. Take into consideration the facility and staffing needs of the James River Correctional Center.

The committee is to forward the three concepts along with a recommendation for one of the three concepts to the Emergency Commission before June 1, 2008. If the Emergency Commission authorizes one of the three concepts, the Emergency Commission is to forward the authorized concept to the Budget Section. The Legislative Council staff said the Legislative Council, at its June 6, 2007, meeting, directed that any recommendation from the Emergency Commission regarding facility concepts be received by the Budget Section for informational purposes only rather than for approval or rejection. The Legislative Council staff said Section 18 of 2007 House Bill No. 1015 provides that the correctional facility concepts to be developed must not include any consideration of closure of the James River Correctional Center in Jamestown or the Dakota Women's Correctional and Rehabilitation Center in New England.

The Legislative Council staff said that a consultant was hired in the 2001-02 interim to study the facilities and operations of the Department of Corrections and Rehabilitation. The consultant's report included findings and recommendations of the study of the Department of Corrections and Rehabilitation in the areas of population and capacity management, physical plant, operations, and programs.

The Legislative Council staff said the 2003-04 interim Budget Committee on Government Services studied the long-term needs of state inmates and whether the Department of Corrections and Rehabilitation should continue to contract with county jails to house state female inmates or if the state should expand the prison system. As part of the study, the committee encouraged the Department of Corrections and Rehabilitation to request funds from the preliminary planning revolving fund to determine the cost and specifications relating to the replacement of the east cellhouse at the State Penitentiary. The department requested and received \$60,000 from the preliminary planning revolving fund and hired an architect to conduct the study of the replacement of the east cellhouse. The architect's study included findings in the areas of the east cellhouse, medical facilities, segregation, orientation, and facility. The

architect's recommendation for changes at the State Penitentiary included:

1. Relocating the warehouse.
2. Constructing new vehicle access and a new south tower.
3. Demolishing the existing south tower.
4. Constructing new orientation housing, an inmate intake/transfer unit, clinic, infirmary, segregation unit, visitors' entrance, and laundry facility.
5. Eliminating the east cellhouse.

The total project cost was estimated to be \$29.2 million, and it was estimated that the total project cost would increase by approximately \$2.1 million if the project is delayed from 2006 until 2008.

The Legislative Council staff said during its study, the 2003-04 interim Budget Committee on Government Services also learned about a proposed riverbank stabilization project along the riverfront property the Department of Corrections and Rehabilitation owns at the Missouri River Correctional Center. Upon the recommendation of the committee, the Department of Corrections and Rehabilitation obtained appraisals of the land it owns along the Missouri River at the Missouri River Correctional Center. The appraisal report stated that as of February 2, 2005, the market value of the land without the riverbank stabilization easement is \$7.85 million and the market value of the land with the permanent riverbank stabilization easement is \$1.82 million. During the 2005-06 interim, the Corps of Engineers received approval and funding to conduct a feasibility study regarding the riverbank stabilization project.

The Legislative Council staff said the 2005-06 interim Budget Committee on Government Services studied the Department of Corrections and Rehabilitation's incarceration and facility needs. The committee recommended House Bill No. 1026 to provide an appropriation of \$38 million from the general fund for the renovation and expansion of the east cellhouse. The Legislative Assembly defeated this bill.

The Legislative Council staff said the 2007 Legislative Assembly removed the \$42 million general fund appropriation included in the executive recommendation for a State Penitentiary expansion project and provided for a transfer of \$41 million from the general fund to the State Penitentiary land fund for addressing correctional facility needs pursuant to Section 10 of 2007 House Bill No. 1015.

The Legislative Council staff said the action plan the committee may wish to use to carry out its responsibility to address the immediate and future needs of the State Penitentiary is:

1. Prepare a request for proposal for consulting and architectural services for the development of three correctional facility concepts.
2. Develop a list of potential consultants.
3. Hear presentations from interested consultants.

4. Recommend a consultant to the Legislative Council.
5. Receive input from the Department of Corrections and Rehabilitation regarding the correctional facility concepts.
6. Receive testimony from other interested persons.
7. Tour the State Penitentiary, Missouri River Correctional Center, and other locations which may be suitable for a correctional facility.
8. Receive periodic progress reports from the consultant.
9. Develop a recommendation of one of the three correctional facility concepts.
10. Forward the three concepts along with the recommendation for one of the three concepts to the Emergency Commission for consideration and authorization.
11. Prepare a final report for submission to the Legislative Council.

ATTORNEY GENERAL'S OPINION

At the request of Chairman Pollert, the legislative budget analyst and auditor distributed and reviewed an Attorney General's letter opinion (2007-L-08) dated June 6, 2007, regarding the constitutionality of Section 10 of 2007 House Bill No. 1015. He said the opinion stated that if a court were to rule on the matter, it would determine that subsection 8 of Section 10 of House Bill No. 1015 relating to Budget Section approval or rejection of a correctional facility concept is unconstitutional. He said the Legislative Council may receive a recommendation from the Emergency Commission for informational purposes. A copy of the Attorney General's opinion is on file in the Legislative Council office.

REQUEST FOR PROPOSAL

At the request of Chairman Pollert, the Legislative Council staff reviewed a draft copy of a request for proposal for consulting and architectural services for the development of the three correctional facility concepts. The Legislative Council staff said the request for proposal identifies the three correctional facility concepts to be developed by the consultant and criteria that each concept must include. A copy of the request for proposal is on file in the Legislative Council office.

In response to a question from Senator Grindberg, Chairman Pollert said the request for proposal is for the development of three correctional facility concepts. He said a new request for proposal would be issued for the actual construction or remodeling project once it is authorized, including detailed architectural design.

The legislative budget analyst and auditor said each concept developed by the consultant must include a preliminary architectural design. He said the information provided would be at a high level, similar in the scope to previous architectural designs

prepared for the State Penitentiary remodeling. Representative Wieland said the consultant's product will include a general layout of the three proposals but will not include detailed architectural drawings as those will be part of the project's cost and will be bid at a later date by the Department of Corrections and Rehabilitation.

In response to a question from Representative Metcalf, Senator Stenehjem said the Governor does not have authority to spend the \$41 million in the State Penitentiary land fund without legislative approval. Chairman Pollert said the Governor may call a special session of the Legislative Assembly or include funding in the 2009-11 biennium executive budget for the recommended concept.

Senator Grindberg stated the request for proposal should be revised to clarify that the cost-benefit analysis include a comparison of operational costs for the existing facility to operational costs for the proposed concepts.

It was moved by Senator Grindberg, seconded by Representative Metcalf, and carried on a roll call vote to approve the request for proposal as amended for distribution to identified prospective consultants. Representatives Pollert, Metcalf, and Wieland and Senators Grindberg, O'Connell, and Stenehjem voted "aye." No negative votes were cast.

COMMENTS BY COMMITTEE MEMBERS AND OTHER INTERESTED PERSONS

Representative Metcalf stated the Penitentiary should be remodeled and a design plan developed for a future new facility. He said the concepts to be developed should include consideration for treatment and rehabilitation.

Senator O'Connell said the general public needs to be informed on the needs of the State Penitentiary. He said the Department of Corrections and Rehabilitation should be involved in the selection process for the consultant.

Senator Stenehjem requested information on past biennium appropriations for nontraditional beds and actual versus authorized full-time equivalent positions for all facilities and divisions at the Department of Corrections and Rehabilitation.

Senator Stenehjem said the committee will not make any decisions on whether to sell any land at the Missouri River Correctional Center.

Representative Wieland said arrangements should be made for the committee to hear concerns of correctional officers and other employees of the Department of Corrections and Rehabilitation regarding the proposed concepts.

Senator Grindberg said a matrix should be developed to evaluate each proposal. He said the selected consultant should meet with employees of the department.

Mr. Dave Krabbenhoft, Director of Fiscal Affairs, Department of Corrections and Rehabilitation, said the department is eager to assist the committee as it

carries out its responsibilities. He said the department will provide information and arrange for tours as needed. He said space could be made available for the consultant to work onsite.

In response to a question from Representative Wieland, Mr. Krabbenhoft said the Department of Corrections and Rehabilitation does have a mission statement. He said a copy will be provided to committee members.

OTHER RESPONSIBILITIES

The Legislative Council staff presented a memorandum entitled [*Other Responsibilities of the Correctional Facility Review Committee*](#) relating to the committee's other responsibilities regarding receiving a report from the Department of Human Services on the 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 Department of Human Services.

INTERAGENCY AGREEMENT

The Legislative Council staff said 2007 Senate Bill No. 2136 provides for an interagency agreement between the Department of Human Services and the Department of Corrections and Rehabilitation effective August 1, 2007. Pursuant to the agreement, the Department of Corrections and Rehabilitation shall train, consult, and assist the Department of Human Services with the provision and enforcement of safety and security procedures at state-owned facilities for all individuals placed at those facilities for evaluation or civil commitment and treatment under North Dakota Century Code Chapter 25-03.3 and for all staff, visitors, and volunteers at those facilities. The Department of Human Services shall continue to be responsible for the care and custody of individuals placed at those facilities for evaluation or civil commitment.

The Legislative Council staff said the action plan the committee may wish to use to carry out this responsibility is:

1. Receive a report from the Department of Human Services by March 1, 2008, regarding services provided by the Department of Corrections and Rehabilitation.
2. Receive testimony from other interested persons.
3. Develop a recommendation and any bill draft necessary to implement the recommendation.
4. Prepare a final report for submission to the Legislative Council.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Chairman Pollert said the next meeting of the Correctional Facility Review Committee will be held on Tuesday, August 21, 2007, at 9:00 a.m. to hear presentations from interested consultants.

The committee adjourned subject to the call of the chair at 3:00 p.m.

Becky Keller
Fiscal Analyst

Jim W. Smith
Legislative Budget Analyst and Auditor

[ATTACH:1](#)