

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### BUDGET SECTION

Thursday, March 11, 2010  
Senate Chamber, State Capitol  
Bismarck, North Dakota

Senator Ray Holmberg, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Ray Holmberg, Bill Bowman, Tom Fischer, Tony S. Grindberg, Ralph L. Kilzer, Elroy N. Lindaas, Tim Mathern, Carolyn Nelson, David O'Connell, Larry J. Robinson, Tom Seymour, Bob Stenehjem, Rich Wardner, John Warner; Representatives Larry Bellew, Merle Boucher, Al Carlson, Jeff Delzer, Mark A. Dosch, Kathy Hawken, Lee Kaldor, James Kerzman, Matthew M. Klein, Gary Kreidt, Joe Kroeber, Ralph Metcalf, Shirley Meyer, David Monson, Kenton Onstad, Chet Pollert, Ken Svedjan, Blair Thoreson, Don Vigesaa, Francis J. Wald, Alon C. Wieland, Clark Williams

**Members absent:** Senators Randel Christmann, Karen K. Krebsbach; Representatives Rick Berg, Mary Ekstrom, Eliot Glassheim, Keith Kempenich, Bob Martinson, Jon Nelson, Bob Skarphol

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

Representative Lisa Wolf, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

**It was moved by Senator Robinson, seconded by Representative Thoreson, and carried on a voice vote that the minutes of the December 15, 2009, meeting be approved as distributed.**

#### STATUS OF THE STATE GENERAL FUND

Chairman Holmberg called on Ms. Pam Sharp, Director, Office of Management and Budget (OMB), to present a report on the status of the general fund. A copy of the information presented is on file in the Legislative Council office.

Ms. Sharp said the 12-month percentage change in the nonseasonally adjusted consumer price index was 2.6 percent in January 2010. She said for calendar year 2009, the consumer price index declined by .4 percent, but normal growth is expected long term in the consumer price index. She said it is expected to increase by 2.1 percent during 2010, followed by increases between 2.1 percent and 2.8 percent through 2014. She said the average yield on a three-month Treasury bill during the fourth quarter of 2009 was .06 percent, 10 basis points lower than the previous quarter, bringing the 2009 average to .15 percent. She said Economy.com predicts that three-month Treasury bill rates will begin to increase,

averaging .38 percent in 2010, 2 percent in 2011, and approximately 4 percent from 2012 through 2014. She said personal income, as reported by Economy.com in inflation-adjusted 2005 dollars, fell 1.6 percent during 2009, following a decline of .4 percent during calendar year 2008. She said the forecast shows personal income remaining stable through 2010 with growth predicted to average approximately 3 percent in 2011 and 4 percent in 2012 through 2014. She said North Dakota's unemployment rate for December 2009 was 4.3 percent, compared to the national rate of 9.7 percent. She said North Dakota oil production continued to set new records as it increased to 245,500 barrels per day in November 2009 before decreasing to 241,500 barrels per day in December 2009 because of snow and cold weather. She said the average price for North Dakota crude oil was \$66 per barrel in October 2009, \$67 per barrel in November 2009, and \$64 per barrel in December 2009. She said the current oil price is \$72 per barrel and the rig count is 100.

Ms. Sharp presented the following information on the status of the state general fund for the 2009-11 biennium based on revenue collections through January 2010:

Unobligated general fund balance - July 1, 2009		\$361,843,514
Add		
General fund collections through January 2010	\$1,004,383,968	
Forecasted general fund revenue for the remainder of the 2009-11 biennium	1,936,506,102	
Total estimated general fund revenue for the 2009-11 biennium		\$2,940,890,070
Estimated general fund turnback		2,263,883
Balance obligated for authorized carryover from the 2007-09 biennium		76,383,530
Estimated total available		\$3,381,380,997
Less		
2009-11 biennium general fund ongoing appropriations	(\$2,970,380,754)	
2009-11 biennium general fund one-time appropriations	(278,984,727)	
Contingent appropriation to the centers of excellence fund (2009 SB 2018)	(5,000,000)	

Balance obligated for authorized carryover from the 2007-09 biennium	(76,383,530)	
Estimated deficiency requests	(3,823,000)	
Total appropriations and estimated deficiency requests		(\$3,334,572,011)
Estimated general fund balance - June 30, 2011		\$46,808,986

Ms. Sharp said general fund revenues for the period beginning July 1, 2009, and ending December 1, 2009, exceeded legislative estimates by at least \$5 million meeting the contingency conditions identified in Section 22 of 2009 Senate Bill No. 2018 and triggering a \$5 million appropriation from the general fund to the centers of excellence fund. She said the \$5 million has been transferred to the centers of excellence fund.

Ms. Sharp presented the following information on the status of the permanent oil tax trust fund for the 2009-11 biennium:

Beginning permanent oil tax trust fund balance - July 1, 2009	\$489,727,017
Add	
Revenue collections through January 2010	79,640,382
Forecasted revenues for the 2009-11 biennium (based on 2009 legislative forecast assumptions for oil price and production)	323,092,000
Total estimated funds available for the 2009-11 biennium	\$892,459,399
Less expenditures and transfers	
Transfer to the general fund pursuant to 2009 HB 1015	(\$140,000,000)
Transfer to the general fund for the mill levy reduction program pursuant to 2009 SB 2199	(295,000,000)
Transfer to the property tax relief sustainability fund pursuant to 2009 SB 2199	(295,000,000)
Appropriations pursuant to 2009 HB 1015, 1305, and 1394 and SB 2003 and 2020	(16,175,100)
Estimated permanent oil tax trust fund balance - June 30, 2011	\$146,284,299

Ms. Sharp said \$71 million in oil and gas tax revenue has been deposited in the general fund and currently all oil and gas tax collections allocated to the state for the 2009-11 biennium are being deposited in the permanent oil tax trust fund. She said these deposits have been approximately \$30 million per month and if the deposits remain at that level for the remainder of the biennium, the ending balance in the permanent oil tax trust fund could be nearly \$300 million.

Ms. Sharp presented information on general fund revenue collections for January 2010 and the 2009-11 biennium to date. She said general fund revenues collected, biennium to date, are .4 percent more than the legislative forecast. She said sales tax collections for January were \$8 million less than projected. She said the variance was likely due to the month ending on a weekend leaving businesses until Monday to make their payments. She said biennium-to-date sales tax collections were \$17.7 million, or 5.2 percent

less than the legislative forecast, but exceed 2007-09 biennium-to-date collections by \$31.9 million, or 10.9 percent. She said oil tax collections through January have exceeded the biennium-to-date legislative forecast of \$49 million by approximately \$100 million, with \$71 million deposited in the general fund and \$80 million deposited in the permanent oil tax trust fund. She said biennium-to-date motor vehicle excise tax collections have also exceeded estimates by \$8.7 million, or 40.6 percent.

In response to a question from Representative Carlson, Ms. Sharp said based on revenues collected and remaining revenues forecast, it appears ongoing appropriations for the 2009-11 biennium exceed ongoing revenues by approximately \$30 million.

### IRREGULARITIES IN THE FISCAL PRACTICES OF THE STATE

Pursuant to North Dakota Century Code Section 54-14-03.1, Ms. Sharp presented information on irregularities in the fiscal practices of the state. A copy of the information presented is on file in the Legislative Council office. She said the state agencies with fiscal irregularities include:

Agency	Amount	Reason
Department of Public Instruction	\$826	Temporary pay adjustment for increased responsibility
Department of Commerce	\$1,625	Temporary additional workload for internship program
Department of Commerce	\$8,092	Settlement agreement due to reduction in workforce

### ACCURACY OF THE COST ESTIMATES OF PROJECTS THAT RECEIVED FUNDING FROM THE CAPITAL IMPROVEMENTS PRELIMINARY PLANNING REVOLVING FUND

Ms. Sharp presented information regarding the accuracy of the cost estimates of projects that have received funding from the capital improvements preliminary planning revolving fund, including information regarding whether any of these projects have required additional funding after the projects were approved. A copy of the information presented is on file in the Legislative Council office.

Ms. Sharp provided summary information for 12 projects that received funding from the capital improvements preliminary planning revolving fund, including three projects that required an appropriation that exceeded the study estimate, four projects that were within the study estimates, two projects that were less than the study estimates, and three projects for which actual funding is inconclusive because the project was either not approved or not approved individually. She said the increases in the cost of two of the projects that required appropriations in excess of the estimates were due to inflation from the time of the estimates until the time the projects were

approved. She said the third project that required an appropriation in excess of the estimate cost more because of a change in architect and an increase in the scope of the work. A copy of the summary is attached as [Appendix B](#).

### **AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

Ms. Sheila Peterson, Director of Fiscal Management, Office of Management and Budget, presented information regarding the American Recovery and Reinvestment Act of 2009 (ARRA), including an update of funding information and the number of state employees who have been employed using federal stimulus funding.

#### **ARRA Funding Update**

Ms. Peterson provided a listing of ARRA funding to political subdivisions, including airports, cities, counties, fire districts, housing authorities, nonprofit organizations, private entities, school districts, state agencies, tribes, and water districts. A copy of the information presented is on file in the Legislative Council office. She said awards total \$601.8 million, of which \$265.8 million has been received through December 2009. She said a total of 2,418 jobs were reported as having been created or retained by the recipients of the funding. She said the significant increase in the jobs created or retained resulted from a federal Office of Management and Budget revision to the method of determining which jobs are calculated and reported. She said previously, the number of jobs was estimated, but now the number of jobs is computed by dividing the number of hours paid with ARRA funds by the total number of hours in the quarter. She said the jobs calculated relate only to the quarter and are not cumulative.

#### **State Employees Employed Using Federal Stimulus Funding**

Ms. Peterson provided a listing of the number of state employees who have been employed using federal stimulus funding. A copy of the information presented is on file in the Legislative Council office. She said approximately 42 full-time equivalent (FTE) state employees were paid from ARRA funding. She said the Department of Transportation and Job Service North Dakota each received funding for approximately 13.5 FTE positions. She said the Department of Transportation FTE positions existed prior to the availability of ARRA funding and will revert to their original sources of funding when ARRA projects are completed and the stimulus funding is exhausted. She said the majority of the Job Service North Dakota FTE positions were temporary new positions added to assist with the additional workload relating to ARRA funds. She said all but 1.5 FTE positions of the Job Service North Dakota positions will no longer exist after the stimulus funding is exhausted. She said the remaining 1.5 FTE positions

would revert to the original source of funding. She said the Attorney General's office has indicated it wishes to continue its 3.78 FTE ARRA-related positions and will seek other funding sources or request funding from the general fund to continue them.

In response to a question from Representative Carlson, Ms. Peterson said the major ARRA funding included in the 2009-11 biennium budgets that will have to be replaced with funding from the general fund is \$67 million in stimulus funding provided for the enhanced federal medical assistance percentage (FMAP).

Representative Carlson requested OMB include in its next report on federal stimulus funding information regarding how many of the nonstate FTE positions reported are in the private sector.

In response to a question from Representative Carlson, Ms. Peterson said with the exception of some of the weatherization programs, most of the ARRA funding available to the state will be spent by September 30, 2011.

In response to a question from Representative Boucher regarding the eligibility of projects, Ms. Peterson said because the Department of Transportation and the State Department of Health anticipated stimulus funding, the departments identified highway and clean and drinking water projects that would meet stimulus eligibility criteria. She said these projects were ready when funding became available.

### **ADJUTANT GENERAL - DISASTER-RELATED EXPENDITURES AND STATE DISASTER RELIEF FUND REQUESTS**

Chairman Holmberg called on Major General David Sprynczynatyk, Adjutant General, to provide information regarding a report on 2009 flood disaster-related expenditures, transfers, reimbursements, and general fund deposits pursuant to 2009 Senate Bill No. 2444, an update on the cost of the January 2010 winter storm disaster, and a request for Budget Section approval to use money in the state disaster relief fund to pay the state's match relating to damage caused by a severe winter storm during January 2010 as provided for in Section 8 of 2009 Senate Bill No. 2012. A copy of the report is on file in the Legislative Council office.

Major General Sprynczynatyk said the potential for a 2010 flood event nearly as large as 2009 exists in many areas of the state. He said it is too early to determine the magnitude of possible flooding. He said the National Guard has begun preparing in anticipation of flooding. He said the Governor has requested a presidential disaster declaration and he anticipates it will be approved. He said the declaration, if approved, will aid the state in the recovery of costs incurred in the flood fight.

Major General Sprynczynatyk provided a summary of funds appropriated for the 2009 flood disaster totaling \$105.5 million, including \$70 million in federal funds, \$23 million from the state disaster relief fund, and \$12.5 million from the general fund. He said funds expended through February 22, 2010, total \$104.5 million. He said of the \$12.5 million provided from the general fund, \$5 million was transferred to the National Guard emergency fund to pay for the National Guard response costs during the flood and he anticipates approximately \$2.5 million will be returned to the general fund. In addition, he said, another deposit of approximately \$2.9 million resulting from an increase in the federal reimbursement from 75 percent to 90 percent will be made to the general fund in March 2010. He said it is anticipated a total of \$5.4 million will be returned to the general fund by the end of the biennium.

Major General Sprynczynatyk provided a summary of the current status of the state disaster relief fund. He said a total of \$43 million was appropriated from the fund, of which up to \$20 million was for emergency snow removal grants to counties, cities, and townships and up to \$23 million was for paying costs relating to the 2009 flood disaster, snow removal damage to roads, and other disasters in accordance with Section 8 of 2009 Senate Bill No. 2012. He said through February 22, 2010, grants provided from the state disaster relief fund for emergency snow removal totaled \$5.4 million and for 2009 flood disaster relief totaled approximately \$6 million. He said interest accrued in the fund has totaled approximately \$45,000 through January 2010 bringing the balance in the fund to approximately \$37 million as of February 22, 2010. He said the grants for 2009 flood disaster relief were to provide 50 percent of the local match or 3 percent of the qualified projects and it is anticipated an additional \$2.3 million in grants will be provided during the remainder of the biennium. In addition, he said, it is anticipated flood mitigation assistance and hazard mitigation grants will total another \$1.5 million. He said the estimated balance remaining at the end of the biennium in the state disaster relief fund after these anticipated grants is \$33 million.

Major General Sprynczynatyk requested Budget Section approval pursuant to Section 8 of 2009 Senate Bill No. 2012 for the following expenditures from the state disaster relief fund:

	Funding Request	Amount
1.	Request for funding to provide 10 percent match for the costs associated with the January 2010 ice storm	\$2,336,250
2.	Request for 97 percent of the cost of repairing a parking lot damaged during staging for the 2009 flood event that did not qualify for Federal Emergency Management Assistance (FEMA) reimbursement	21,909
3.	Request for 97 percent of the cost of raising the grade level of a county road to protect the road from rising flood waters and ensure continued public use. The expenditure did not qualify for FEMA reimbursement.	180,420

4.	Request for funding to provide the state match for costs associated with disasters prior to 2009 for which the department is still making payments	2,718,952
5.	Request for funding to repay the federal share of home buyouts made through the hazard mitigation grant program in 1998 that were later deemed ineligible by FEMA inspectors	192,486
6.	Request for funding to purchase flood materials in anticipation of a 2010 flood event and a presidential disaster declaration	500,000
Total		\$5,950,017

In response to a question from Representative Delzer, Major General Sprynczynatyk said if the state disaster relief fund had not been created by the 2009 Legislative Assembly, the agency would have had to borrow the funding for these expenditures from the Bank of North Dakota and seek a deficiency appropriation from the 2011 Legislative Assembly to repay the loan. He said the department is seeking approval to pay for these expenditures from the state disaster relief fund pursuant to Section 8 of 2009 Senate Bill No. 2012 to avoid borrowing money from the Bank.

Representative Delzer asked the legislative budget analyst and auditor to review the authority of the Budget Section to approve the expenditures from the state disaster relief fund as requested by Major General Sprynczynatyk.

In response to a question from Representative Delzer, Major General Sprynczynatyk said regarding the request to repay the federal share of the home buyouts, if the Budget Section does not approve the repayment, the Department of Emergency Services will continue to pursue repayment from the county.

Later in the meeting, Chairman Holmberg called on the legislative budget analyst and auditor to provide information regarding Budget Section authority to approve the use of money in the state disaster relief fund as provided for in Section 8 of 2009 Senate Bill No. 2012. The legislative budget analyst and auditor provided information regarding the state disaster relief fund and the requests for funding from the state disaster relief fund submitted for Budget Section approval by the Adjutant General. The legislative budget analyst and auditor said the requests are for funding from the \$23 million deposited into the fund to pay costs relating to the 2009 flood disaster, snow removal damage to roads, and other disasters in accordance with Section 8 of 2009 Senate Bill No. 2012. He said the section provides that funds not distributed to political subdivisions may be used to match federal disaster relief funds received for state purposes subject to Budget Section approval. He said the requests for state funds to match federal disaster relief associated with the January 2010 ice storm and disasters prior to 2009 meet the criteria for Budget Section consideration. He said since the other requests are not for state funds to match federal disaster relief funds, the Budget Section may not be authorized to approve these. The legislative budget

analyst and auditor said Legislative Council staff would further review the Budget Section's authority to approve the requests for reimbursement of parking lot repairs, the raising of a county road, the federal share of home buyouts, and 2010 flood materials prior to the next meeting of the Budget Section.

**It was moved by Representative Delzer, seconded by Senator Mathern, and carried on a roll call vote that the Budget Section pursuant to Section 8 of 2009 Senate Bill No. 2012 approve the Adjutant General request to use \$2,336,250 from the state disaster relief fund to pay the state's match relating to damage caused by a severe winter storm during January 2010 and \$2,718,952 from the state disaster relief fund to pay the state's match relating to damage caused by disasters prior to 2009.** Senators Holmberg, Bowman, Fischer, Grindberg, Kilzer, Lindaas, Mathern, Nelson, O'Connell, Robinson, Seymour, Stenehjem, Wardner, and Warner and Representatives Bellew, Boucher, Carlson, Delzer, Dosch, Hawken, Kaldor, Kerzman, Klein, Kreidt, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, Thoreson, Vigesaa, Wald, Wieland, and Williams voted "aye." No negative votes were cast.

### **PROPOSED CHANGES TO THE 2011-13 BIENNIUM BUDGET DATA**

Chairman Holmberg called on Ms. Sharp to present proposed changes to the 2011-13 biennium budget data pursuant to Section 54-44.1-07, including anticipated activities and timeline, budget system changes, and a plan for addressing one-time and federal stimulus funding changes. She said OMB anticipates releasing budget guidelines to the agencies for the 2011-13 biennium in early April. She said the guidelines are released at a meeting that includes the Governor, OMB staff, agency directors and fiscal staff, and any other interested persons. She said OMB will work with Economy.com and the Tax Department to complete a preliminary revenue forecast in June or July 2010. She said the forecast will include updated revenue information for the 2009-11 biennium and a preliminary estimate of 2011-13 revenues. She said agency budgets must be submitted to OMB by July 15, 2010. She said from August through mid-October, OMB will conduct agency budget hearings. She said an updated revenue forecast will be completed in November, and the executive budget will be delivered to the Legislative Assembly during its organizational session in December.

Chairman Holmberg asked OMB to notify the Legislative Council when budget guidelines become available so the information can be provided to the Budget Section members.

Representative Carlson suggested the summary of the budget guidelines presented to the agencies in April be provided to legislators.

Ms. Sharp said the current budget system has been upgraded to an Internet-based version, allowing agencies web access to the system. She said budget reports will look the same and will be available on the OMB website.

Ms. Sharp said the ARRA funding included in the Department of Human Services 2009-11 biennium budget relating to FMAP will need to be replaced with funding from the general fund for the 2011-13 biennium and will be included in the Department of Human Services' base budget. She said other agencies wishing to use any funding from the general fund to continue federal stimulus programs in the 2011-13 biennium must request the additional funding. She said the funding will not be included in their base budgets.

Ms. Sharp said there are no proposed changes to the 2011-13 biennium budget data pursuant to Section 54-44.1-07.

### **SALES TAX COLLECTIONS RESULTING FROM OIL-RELATED ACTIVITIES**

Mr. Ryan Rauschenberger, Deputy State Tax Commissioner, Tax Department, presented information regarding the estimated amount of sales tax collections resulting from oil-related activities. A copy of the report is on file in the Legislative Council office. He said total taxable sales and purchases related to oil and gas exploration and production increased from \$265.9 million in 2006 to \$950.4 million in 2008. He said total taxable sales and purchases related to oil and gas exploration and production in 2009 was approximately \$704.1 million; however, fourth quarter 2009 information is not complete. He said approximate sales tax revenue from taxable sales and purchases related to oil and gas exploration and production increased from \$13.3 million in 2006 to \$47.5 million in 2008. He said sales tax revenue from taxable sales and purchases related to oil and gas exploration and production increased 100.5 percent from 2007 to 2008. In addition, he provided information regarding total taxable sales and purchases reported by all businesses within selected oil-producing counties, including Bowman, Dunn, McKenzie, Mountrail, and Williams. He said the counties showing the largest increase in taxable sales and purchases from 2007 to 2008 were Mountrail and Williams with increases of 87.9 percent and 78.4 percent, respectively. He said the report summarizes taxable sales but does not include services which are not taxed and therefore not reflected in the totals.

In response to a question from Representative Wald, Mr. Rauschenberger said the sales tax revenue information provided is from taxable sales and purchases related to oil and gas exploration and production and does not include motor vehicle excise tax collections.

In response to a question from Representative Wald, Mr. Rauschenberger said the information

provided in the report is based on the department's *North Dakota Sales and Use Tax Statistical Report* which summarizes data from sales and use tax returns businesses are required to file.

Representative Wald expressed concern that the proximity of some oil-producing counties to larger retail markets may result in sales increases to the larger counties and those increases are not reflected in the report.

### **NORTH DAKOTA UNIVERSITY SYSTEM PROJECT UPDATE**

Chairman Holmberg called on Ms. Cathy McDonald, Director of Finance, North Dakota University System, to present information regarding an update of the status of major higher education construction projects. A copy of the report is on file in the Legislative Council office. Ms. McDonald said the University System office asked the campuses to provide updates to the information presented to the Budget Section at the September 2009 meeting. She said the report provides total expenditures to date for each project. She said the only project reporting a change in authorization was the science laboratory at Williston State College. She said at its September 2009 meeting, the Budget Section authorized a change in the scope of the project from a renovation to an addition and increased the authorization from \$1.61 million to \$2.2 million.

Ms. McDonald provided information regarding the collapse of the northwest section of Minard Hall at North Dakota State University. She said the cost of repairs through January 2010 have totaled \$504,000. She said the full cost of repairing the building is not yet known.

Chairman Holmberg called on Mr. Rick Tonder, Director of Campus Capital Projects and Planning, University of North Dakota, Grand Forks, to present information regarding the anticipated use of space that would be vacated if the information technology facility project at the University of North Dakota is approved. A copy of the report is on file in the Legislative Council office. Mr. Tonder said the university has been focusing its efforts on planning for a new information technology facility and has not yet developed a plan for use of the vacated space. He said when complete, the plan will be presented to the State Board of Higher Education and the Budget Section.

### **UNIVERSITY FOUNDATION FUNDS**

Chairman Holmberg announced that representatives of the University of North Dakota and North Dakota State University foundations were unable to travel to the meeting due to inclement weather in the eastern part of the state.

Chairman Holmberg called on Mr. Tonder to present information on behalf of the University of North Dakota Foundation. Mr. Tonder distributed to each member written reports regarding the use of

University of North Dakota Foundation funds. A copy of the report is on file in the Legislative Council office. The reports distributed include an executive summary, audited financial statements for the period ended June 30, 2009, and a summary of University of North Dakota Foundation support for university educators, facilities, programs, and student scholarships. The report indicated during fiscal year 2009 the alumni association of the University of North Dakota and the University of North Dakota Foundation provided \$11.5 million in support to the University of North Dakota, of which \$5.2 million was program support, \$4.3 million was student scholarships, \$1.6 million was facilities, and \$.4 million was to educators.

Chairman Holmberg called on Mr. William G. Goetz, Chancellor, North Dakota University System, to discuss a written report distributed by the University System office on behalf of the North Dakota State University Foundation regarding the use of foundation funds. A copy of the report is on file in the Legislative Council office. The report indicated during fiscal year 2009, the North Dakota State University Foundation provided \$8.5 million in support to North Dakota State University, of which \$4.7 million was for student scholarships and fellowships; \$1 million was for building projects; \$.4 million was for salary enhancements; and \$2.4 million was for other purposes, including \$1.9 million for North Dakota State University and department discretionary spending.

### **NORTH DAKOTA UNIVERSITY SYSTEM - CHANGE IN SCOPE OF PROJECTS Minot State University - Health and Wellness Center**

Mr. Ron Dorn, Vice President for Administration and Finance, Minot State University, Minot, presented information regarding a request for Budget Section approval to increase the project authorization for the Health and Wellness Center from \$10 million to \$12.77 million and change the scope of Phase 1 of the Health and Wellness Center project pursuant to Section 48-01.2-25. He said the increase in project authorization and change in scope relate to the addition of a skywalk, a climbing wall, equipment, and a 13,850-square-foot basement. He said the project originally did not include a basement. He said the additional funding will be provided by local funds, including online program revenue.

In response to a question from Senator Stenehjem, Mr. Dorn said the additional funds would not come from a student fee increase, but from local fund revenues, including online courses. He said the university expects additional funds will be generated by an increase in the number of students taking online classes.

In response to a question from Senator Stenehjem, Mr. Dorn said the university has not collaborated with any other community organizations on the project.

In response to a question from Senator Stenehjem, Mr. Dorn said a \$10 million, 30-year bond issue will finance the project as originally approved. He said the university has funding available to pay for the increase in the square footage of the project and anticipates revenues generated during the 18-month construction of the facility would provide the remaining portion of the \$2.77 million increase in authorization being requested. He said the university would not begin the additional work until the funding is available.

In response to a question from Senator Holmberg, Mr. Dorn said the increase in student fees to finance the \$10 million bond issue was approved by the student senate before being submitted to the University System office. He said the increased fees began in July 2009.

In response to a question from Representative Dosch, Mr. Dorn said Swain Hall was the last major deferred maintenance project on campus. He said completion of the Swain Hall project reduces deferred maintenance to less than \$4 million.

Representative Dosch expressed concern regarding the expansion of square footage on campuses when the Higher Education Committee recently learned that only 10 percent of deferred maintenance is being funded on campuses.

In response to a question from Representative Svedjan, Mr. Dorn said the \$2.77 million increase includes a skywalk (\$400,000), climbing wall (\$450,000), fitness equipment and office furniture (\$500,000), basement (\$840,000), architecture fees (\$170,000), and a contingency (\$410,000).

In response to a question from Representative Svedjan, Mr. Roger Kluck, Director of Facilities, Minot State University, Minot, said the facility is being built on the side of a hill and the additional space could not be added later. He said because of the proximity to the Dome, the university anticipates the space to be used primarily for athletics.

**It was moved by Senator Mathern and seconded by Senator Nelson that the Budget Section pursuant to Section 48-01.2-25 approve the Minot State University request to increase the Health and Wellness Center project authorization from \$10 million to \$12.77 million and to change the scope of the Health and Wellness Center project.** Senators Holmberg, Lindaas, Mathern, Nelson, Robinson, Seymour, and Warner and Representatives Kaldor, Kerzman, Klein, and Metcalf voted "aye." Senators Bowman, Fischer, Grindberg, Kilzer, Stenehjem, and Wardner and Representatives Bellew, Boucher, Carlson, Delzer, Dosch, Hawken, Kreidt, Kroeber, Meyer, Monson, Onstad, Pollert, Svedjan, Thoreson, Vigesaa, Wald, Wieland, and Williams voted "nay." **The motion failed.**

Later in the meeting, Representative Bellew suggested the Budget Section reconsider its action regarding the request of Minot State University.

**It was moved by Representative Bellew, seconded by Representative Hawken, and carried on a voice vote that the Budget Section reconsider**

**its action regarding the Minot State University request to increase the Health and Wellness Center project authorization from \$10 million to \$12.77 million and to change the scope of the Health and Wellness Center project.**

Representative Bellew said he would be in favor of limiting the project expansion to include only the addition of a basement at an estimated cost of \$840,000 and any related architecture fees of \$84,000, to provide a total increase in project scope of \$924,000.

**It was moved by Representative Bellew, seconded by Senator Seymour, and carried on a roll call vote that the Budget Section pursuant to Section 48-01.2-25 approve the Minot State University request to add a basement to the scope of the Health and Wellness Center project at an estimated cost of \$924,000.** Senators Holmberg, Bowman, Grindberg, Lindaas, Mathern, Nelson, O'Connell, Robinson, Seymour, Wardner, and Warner and Representatives Bellew, Boucher, Hawken, Kaldor, Kerzman, Klein, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, and Wald voted "aye." Senators Fischer, Kilzer, and Stenehjem and Representatives Carlson, Delzer, Dosch, Kreidt, Thoreson, Vigesaa, Wieland, and Williams voted "nay."

#### **Langdon Research Extension Center**

Mr. Randy Mehlhoff, Director, Langdon Research Extension Center, Langdon, presented information regarding a request for Budget Section approval to increase the project authorization and amend the project scope and the funding sources of the headquarters building heating and cooling system project at the Langdon Research Extension Center from \$144,000 to \$200,000. A copy of the report is on file in the Legislative Council office. He said the request is for an additional \$56,000 in authorization to replace the current heating and cooling system at the Langdon Research Extension Center headquarters building with a geothermal system during its renovation. He said the additional funding would be generated from multiple sources, including seed stock sales and variety testing fees.

In response to a question from Representative Bellew, Mr. Mehlhoff said the project is not eligible for ARRA funding, but the agency is researching the possibility that the project may qualify for a Department of Energy state energy program grant through the North Dakota Department of Commerce.

In response to a question from Representative Monson, Mr. Mehlhoff said the facility currently pays an average of \$15,000 per year for heating and cooling and estimates the savings if the geothermal system is installed could total \$8,000 per year.

**It was moved by Representative Klein, seconded by Representative Monson, and carried on a roll call vote that the Budget Section pursuant to Section 48-01.2-25 approve the North Dakota State University request to increase the**

**project authorization from \$144,000 to \$200,000 and change the project scope to include a geothermal system for the headquarters building heating and cooling system project at the Langdon Research Extension Center.** Senators Holmberg, Bowman, Fischer, Grindberg, Kilzer, Lindaas, Mathern, Nelson, Robinson, Seymour, Stenehjem, Wardner, and Warner and Representatives Bellew, Boucher, Carlson, Dosch, Hawken, Kaldor, Kerzman, Klein, Kreidt, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, Thoreson, Vigesaa, Wald, Wieland, and Williams voted "aye." No negative votes were cast.

### **University of North Dakota**

Mr. Tonder presented information regarding a request for Budget Section approval to increase the project authorization for the renovation/addition to the Education Building project from \$11.2 million to \$12.6 million. A copy of the report is on file in the Legislative Council office. He said funding for the project consists of ARRA funds which may not be used to purchase furniture, fixtures, and equipment. He said the original project budget did not include all costs which are now required by the State Board of Higher Education. He said the university is requesting approval to increase authorization by \$1.4 million of local funds to purchase new furniture and equipment and to update existing faculty offices, student spaces, and administrative areas in the newly remodeled facility. He said he anticipates a majority of the additional funds to be from private donations, but institutional funds may also be used if available.

**It was moved by Representative Wald, seconded by Representative Svedjan, and carried on a roll call vote that the Budget Section pursuant to Section 48-01.2-25 approve the University of North Dakota request to increase the project authorization for the renovation/addition to the Education Building project from \$11.2 million to \$12.6 million.** Senators Holmberg, Bowman, Fischer, Grindberg, Kilzer, Lindaas, Mathern, Nelson, Robinson, Seymour, Stenehjem, Wardner, and Warner and Representatives Boucher, Carlson, Hawken, Kaldor, Kerzman, Klein, Kreidt, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, Thoreson, Vigesaa, Wald, Wieland, and Williams voted "aye." Representatives Bellew and Dosch voted "nay."

### **State College of Science**

Mr. Mike Renk, Vice President, Business Affairs, State College of Science, Wahpeton, presented information regarding a request for Budget Section approval to increase the project authorization for the renovation of Horton Hall from \$5.7 million to \$6.375 million. A copy of the report is on file in the Legislative Council office. He said the increase in authorization is for furniture and equipment not included in the original project total. He said up to \$610,000 of the increase will be provided from

operations, including tuition income. He said the remaining balance will be from local funds generated from extended learning and print services and copy center operations.

In response to a question from Representative Dosch, Mr. Renk said the original request for \$5.7 million was only for the renovation of Horton Hall. He said the college had always planned to purchase the furniture and equipment separately.

In response to a question from Representative Kaldor, Mr. Renk said a recent change in State Board of Higher Education policy requires the college to include all costs in the project, including furniture and equipment, which makes it necessary for the college to request an increase in authorization.

In response to a question from Representative Kaldor, Mr. Goetz said projects approved prior to the board policy change did not include furniture and equipment costs and are part of a transition to the new policy. He said this change results in these projects seeking increases in authorization to include these costs.

**It was moved by Senator Mathern, seconded by Senator Robinson, and carried on a roll call vote that the Budget Section pursuant to Section 48-01.2-25 approve the State College of Science request to increase the project authorization for the renovation of Horton Hall from \$5.7 million to \$6.375 million.** Senators Holmberg, Bowman, Fischer, Grindberg, Kilzer, Lindaas, Mathern, Nelson, Robinson, Seymour, Wardner, and Warner and Representatives Boucher, Hawken, Kaldor, Kerzman, Klein, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, Wald, Wieland, and Williams voted "aye." Senator Stenehjem and Representatives Bellew, Delzer, Dosch, Kreidt, Thoreson, and Vigesaa voted "nay."

### **UNIVERSITY OF NORTH DAKOTA - ACCEPTANCE OF DONATED ASSET**

Chairman Holmberg called on Mr. Tonder to present information regarding a request to accept and spend a gift of \$500,000 for the renovation of existing classroom space within the University of North Dakota School of Law pursuant to Section 15-10-12.1. A copy of the report is on file in the Legislative Council office. Mr. Tonder said all funds for the project are from private donations and the renovation will include all construction, furniture, and technology to complete the space. He said the project will be managed by the state and competitively bid. He said the university does not anticipate the renovation will increase utility or maintenance costs.

**It was moved by Representative Wald, seconded by Senator Robinson, and carried on a roll call vote that the Budget Section pursuant to Section 15-10-12.1 approve the University of North Dakota request to accept and spend a gift of \$500,000 for the renovation of existing classroom space within the University of North Dakota**



**School of Law.** Senators Holmberg, Bowman, Fischer, Grindberg, Kilzer, Lindaas, Mathern, Nelson, Robinson, Seymour, Stenehjem, Wardner, and Warner and Representatives Bellew, Boucher, Delzer, Dosch, Hawken, Kaldor, Kerzman, Klein, Kreidt, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, Thoreson, Vigesaa, Wald, and Wieland voted "aye." No negative votes were cast.

### **NORTH DAKOTA STATE UNIVERSITY - ACCEPTANCE OF FEDERAL AND SPECIAL FUNDS**

Chairman Holmberg called Mr. Bernhardt Saini-Eidukat, Chair, Department of Geosciences, North Dakota State University, Fargo, to present information regarding a request to accept and spend \$720,000 of federal funds and \$30,000 of special funds for the first floor renovation of the Geosciences Hall at North Dakota State University pursuant to Section 15-10-12.1. A copy of the report is on file in the Legislative Council office. Mr. Saini-Eidukat said the renovation would upgrade two laboratories and include asbestos removal. He said the cost of remodeling an office and piping water into the laboratories is not included in the federal grant. He said funding for the project is provided by a National Science Foundation grant (\$720,000) and North Dakota State University appropriated and local funds (\$30,000).

**It was moved by Senator Robinson, seconded by Representative Thoreson, and carried on a roll call vote that the Budget Section pursuant to Section 15-10-12.1 approve the North Dakota State University request to accept and spend \$720,000 of federal funds and \$30,000 of special funds for the first floor renovation of the Geosciences Hall at North Dakota State University.** Senators Holmberg, Bowman, Fischer, Grindberg, Kilzer, Lindaas, Mathern, Nelson, Robinson, Seymour, Stenehjem, Wardner, and Warner and Representatives Bellew, Boucher, Delzer, Dosch, Hawken, Kaldor, Kerzman, Klein, Kreidt, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, Thoreson, Vigesaa, Wald, Wieland, and Williams voted "aye." No negative votes were cast.

### **AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION**

Chairman Holmberg directed the committee to consider agency requests, which have been authorized by the Emergency Commission and forwarded to the Budget Section pursuant to Sections 54-16-04.1 and 54-16-04.2. The information relating to the requests was provided to Budget Section members prior to the meeting and is on file in the Legislative Council office.

**It was moved by Senator Robinson, seconded by Senator Lindaas, and carried on a roll call vote that pursuant to Section 54-16-04.1 the Budget Section approve the following requests, which**

**have been approved by the Emergency Commission:**

- **Job Service North Dakota (Request #1721) - The request is to increase spending authority by \$87,087 of federal funds from the American Recovery and Reinvestment Act of 2009 for administration of the emergency unemployment compensation program, which provides additional weeks of compensation to the unemployed.**
- **State Library (Request #1722) - The request is to increase spending authority by \$200,000 of federal funds from the Institute of Museum and Library Services in the grants line item to provide grants to public and school libraries.**
- **Department of Transportation (Request #1723) - The request is to increase spending authority by \$660,000 of federal funds from the federal Department of Homeland Security for the operating expenses line item (\$250,000) and the capital assets line item (\$410,000) to implement security enhancements at eight driver's license testing sites.**
- **Department of Transportation (Request #1724) - The request is to increase spending authority by \$170,600 of federal funds from the federal Department of Homeland Security made available to the Department of Emergency Services for the capital assets line item to assist in paying costs to upgrade the State Radio network from analog to digital service.**
- **Department of Transportation (Request #1726) - The request is to increase spending authority by \$160,000 of federal funds from the American Recovery and Reinvestment Act of 2009 for a highway project in Slope County on forest Highway 5.**
- **State Department of Health (Request #1727) - The request is to increase spending authority by \$364,148 of federal funds available from the American Recovery and Reinvestment Act of 2009 for the salaries and wages line item (\$75,744) and the operating expenses line item (\$288,404). The funding will be used to reduce the negative health and economic consequences of tobacco use and promote nutrition and physical activity.**
- **Adjutant General (Request #1728) - The request is to increase special funds spending authority by \$63 million of federal funds from the Federal Emergency Management Agency for the 2009 flood disaster.**
- **Adjutant General (Request #1729) - The request is to increase spending authority by \$17,521,875 of federal funds from the**

**Federal Emergency Management Agency for the grants line item (\$17,451,875), the salaries and wages line item (\$45,000), and the operating expenses line item (\$25,000) relating to damage caused in 25 counties and one tribal jurisdiction by a severe winter storm during January 2010.**

- **Secretary of State (Request #1730) - The request is to increase spending authority by \$350,000 to accept federal funds from the United States Election Assistance Commission for the Help America Vote Act election reform fund.**

Senators Holmberg, Bowman, Fischer, Grindberg, Kilzer, Lindaas, Mathern, Nelson, O'Connell, Robinson, Seymour, Stenehjem, Wardner, and Warner and Representatives Bellew, Boucher, Carlson, Delzer, Dosch, Hawken, Kaldor, Kerzman, Klein, Kreidt, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, Thoreson, Vigesaa, Wald, Wieland, and Williams voted "aye." No negative votes were cast.

Ms. Peterson presented information regarding an Emergency Commission request to increase spending authority by \$81.75 million to accept Federal Highway Administration emergency relief funds of \$75.5 million and provide matching funds from the state highway fund of \$6.25 million for roadway projects in the Devils Lake area. She said the additional \$3 million of funding in the salaries line item is for Department of Transportation employees to design projects, prepare requests for proposal, evaluate proposals, award contracts, and monitor projects.

In response to a question from Representative Delzer, Ms. Peterson said the Department of Transportation anticipates the \$6.25 million in matching funds will be available within in the department's 2009-11 budget.

**It was moved by Senator Mathern, seconded by Representative Boucher, and carried on a roll call vote that pursuant to Sections 54-16-04.1 and 54-16-04.2 the Budget Section approve the following request, which has been approved by the Emergency Commission:**

- **Department of Transportation (Request #1725) - The request is to increase spending authority by \$81.75 million to accept Federal Highway Administration emergency relief funds of \$75.5 million and provide matching funds from the state highway fund of \$6.25 million for roadway projects in the Devils Lake area. The funds are to be used for the salaries and wages line item (\$3 million), the operating expenses line item (\$10 million), the capital assets line item (\$64.25 million), and the grants line item (\$4.5 million).**

Senators Holmberg, Bowman, Fischer, Kilzer, Lindaas, Mathern, O'Connell, Robinson, Seymour, Stenehjem, Wardner, and Warner and Representatives Bellew, Boucher, Carlson, Delzer,

Dosch, Hawken, Kerzman, Klein, Kreidt, Kroeber, Metcalf, Meyer, Monson, Onstad, Pollert, Svedjan, Thoreson, Vigesaa, Wald, Wieland, and Williams voted "aye." No negative votes were cast.

### **State Board of Agricultural Research and Education**

Chairman Holmberg called on Mr. Rodney Howe, Chairman, State Board of Agricultural Research and Education, Hettinger, to provide information regarding the status of its activities pursuant to Section 4-05.1-19(10). Mr. Howe distributed a publication regarding the 2009 highlights of the North Dakota Agricultural Experiment Station and the North Dakota State University Extension Service. A copy of the report is on file in the Legislative Council office. He said the board receives information from commodity groups, producers, and researchers. He said the information is summarized into areas, such as soil health, crop quality, improved livestock production, and organic and sustainable agriculture. He said the board prioritizes needs without knowledge of the cost. He said the state is in need of research technicians and facility updates.

Dr. D. C. Coston, Vice President for Agriculture and University Extension, North Dakota State University, Fargo, provided information regarding an update of initiatives approved by the 2009 Legislative Assembly. A copy of the report is on file in the Legislative Council office. He said nearly all of the FTE positions provided to the agricultural experiment stations and the Extension Service have been filled. He said the Main Research Center at North Dakota State University has begun the foundation construction of the research greenhouse complex and remaining contracts will be awarded in the spring of 2010.

### **DEPARTMENT OF HUMAN SERVICES Status of Medicaid Management Information System**

Mr. Mark Boxer, Group President, Affiliated Computer Services Government Healthcare Solutions (ACS), presented information regarding the status of the Medicaid management information system project. A copy of the information presented is on file in the Legislative Council office. He said ACS has merged with Xerox and is now a Xerox company. He said the change will have no negative impact on the Medicaid management information system project. He said ACS acknowledged it needed to strengthen its focus on staffing and project management and reporting. He said ACS has added health care systems depth to both project leadership and its project teams. He said ACS has increased the transparency of its progress through regular updates and the Department of Human Services has access to defect resolution rates, testing results, and resource planning. He said ACS has completed the development of the core application and is now in defect correction mode and

performance tuning. He said due to project complexity and adding work to the plan, the project is approximately 45 days behind the revised schedule. He said during the next month, the team will begin migrating core product code to the North Dakota project and making specific North Dakota modifications. He said ACS still plans to implement the system in April 2011.

In response to a question from Senator Mathern, Mr. Boxer said ACS has access to Xerox resources and as the resources apply, they will be added to the project.

In response to a question from Representative Pollert, Mr. Greg Bryant, Regional Vice President, Government Health Care Services, ACS, said the plan is a full transition from the current system to the new Medicaid management information system. He said there is no plan to operate parallel systems.

In response to a question from Representative Pollert, Mr. Boxer said ACS intends to eliminate the current 45-day delay and deliver the project on budget and on schedule.

Ms. Jennifer Witham, Director, Information Technology Services, Department of Human Services, presented information regarding the status of the Medicaid management information system project and the status of Medicaid claims processing. A copy of the information presented is on file in the Legislative Council office. She said the ACS team has assured the Department of Human Services that its objective is to meet the April 2011 implementation date. She said the department believes there is risk, but ACS has made a commitment to absorb the compression resulting from the delay without impacting project activities, staff, or resources. She said the initial system components that incorporate the state's customizations are scheduled to be delivered in June.

Ms. Witham provided the following project funding summary through January 2010:

Description	Budget	Spent Through January 2010	Remaining
General fund	\$3,643,133	\$2,647,829	\$995,304
Federal funds	55,218,418	31,519,216	23,699,202
Other funds	3,667,820	1,555,112	2,112,708
Total	\$62,529,371	\$35,722,157	\$26,807,214

In response to a question from Representative Boucher, Ms. Witham said the contract provides for a warranty period that begins with the implementation date and final payment will not be made until the warranty period is completed.

In response to a question from Representative Delzer, Ms. Witham said when the Department of Human Services presented this project to the 2007 Legislative Assembly, the implementation date was July 2009.

Ms. Witham said the number of Medicaid claims in suspense has decreased by an average of 6 percent per week over the past 10 weeks. She said as of March 9, 2010, there were 32,700 suspended claims.

## JOB SERVICE NORTH DAKOTA - JOB INSURANCE TRUST FUND

At the request of Chairman Holmberg, Ms. Maren Daley, Executive Director, Job Service North Dakota, presented information regarding the status of the job insurance trust fund pursuant to Section 52-02-17. A copy of the information presented is on file in the Legislative Council office. She said the trust fund balance as of December 31, 2009, was \$85.5 million, exceeding the projected trust fund balance of \$76.9 million. She said the target for reserve adequacy was \$81.2 million.

Ms. Daley said Job Service North Dakota has seen a dramatic increase in claims during 2009 and is anticipating increased claims in 2010 as layoffs continue. She said the trust fund target is expected to increase over the next few years as the recent increase in claims affects the target formula provided in statute. She said the increase in the trust fund target will be implemented incrementally as outlined in statute.

Ms. Daley said the targeted modified average high-cost multiplier is currently .9 percent.

## STATUS OF THE GREAT PLAINS APPLIED ENERGY RESEARCH CENTER

Mr. Bill Wocken, City Administrator, City of Bismarck, presented information regarding the status of the construction of the Great Plains Applied Energy Research Center, including the extent to which nonstate matching funds have been made available for the project pursuant to 2009 House Bill No. 1350. A copy of the information presented is on file in the Legislative Council office. He said the Great Plains Applied Energy Research Center will test energy technology applications on a small scale so they may be more reliably implemented in the field. He said the City of Bismarck and project partners received a grant from the federal Economic Development Administration to complete a feasibility study. He said the study will address the feasibility and financial sustainability of the project concept and if the project is deemed feasible, prepare a long-term business plan. He said the grant provides \$100,000 in federal funds to be matched by \$100,000 from the City of Bismarck and six North Dakota energy companies. He said Deloitte Consulting was awarded the contract for the feasibility study. He anticipates the feasibility study will require seven weeks to complete. He said no state funds will be spent until the feasibility study and business plan are completed indicating the proof of concept and long-term sustainability of the proposed center.

## INDIAN OIL COMPACTS

At the request of Chairman Holmberg, the Legislative Council staff presented information regarding Indian oil compacts, including related revenues. Mr. John Walstad, Code Revisor, presented a memorandum entitled [Fort Berthold](#)

[Reservation Oil Development Under 2007 Senate Bill No. 2419 and Subsequent State-Tribal Agreements.](#)

Mr. Walstad said 2007 Senate Bill No. 2419 authorized the Governor to enter an agreement with the Three Affiliated Tribes to establish certainty in regulation and taxation of oil and gas exploration and development within the Fort Berthold Reservation. He said the agreement was signed and from the effective date of the agreement on July 1, 2008, to the beginning of February 2010, 160 new wells were completed within the Fort Berthold Reservation, including 40 new wells on trust lands. He said at the beginning of February 2010, new wells on trust lands were producing approximately 6,200 barrels of oil per day and 19 drilling rigs were operating within the Fort Berthold Reservation, including 9 drilling on trust lands.

Mr. Walstad said the Governor entered a new agreement with the tribes effective January 13, 2010, which replaces the previous agreement that had a two-year expiration date. He said the new agreement has no expiration date.

Mr. Walstad said regarding the allocation of revenue, 2007 Senate Bill No. 2419 provided that taxes from production on trust lands would be evenly divided between the tribes and the state and production from nontrust lands would be allocated 20 percent to the tribes and 80 percent to the state. He said the allocation of revenue as contained in Section 57-51.2-02(5) provides the distributions to political subdivisions be made from the state's share of revenue not total revenue. He said this is significant because distributions to political subdivisions based on total revenue would be greater than those based on the state's share of revenue as is currently provided.

Mr. Walstad said 2007 Senate Bill No. 2419 also provided the Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future production of oil and gas on the Fort Berthold Reservation during the term of the agreement. He said under the agreement entered by the Governor and the Three Affiliated Tribes in 2008 and renewed in 2010, the tribes are allowed to impose one-time fees totaling \$100,000 per well relating to the siting of the well and use of the land. He said the Governor interprets these fees as being not based on oil production and therefore in compliance with the statutory limitation on tribal taxes and fees. He said the agreement describes the taxes and fees imposed by the tribes as a "one-time \$60,000 Tribal Employment Rights Office ("TERO") fee on wells on Trust Land and a one-time Tribal Application Fee of \$40,000 on wells on Trust Land." He said the state has no information on the fee revenue collected by the tribes but the fee applies to wells with a trust interest of greater than 50 percent. He said 62 wells are in that category. He said at \$100,000 in fees for each qualifying well, the total fee receipts to the tribes would be \$6.2 million.

Mr. Walstad provided information regarding approximate distributions of tribal production-related

oil taxes. He said since the effective date of the first agreement and through December 2009, total gross production and oil extraction tax revenue from oil production within the Fort Berthold Reservation distributed was \$18.2 million, of which \$4.9 million was distributed to the tribes.

Mr. Walstad said the Legislative Assembly could establish a "hold harmless" provision for political subdivisions without changing the agreement with the Three Affiliated Tribes. He said the agreement is silent regarding distributions to political subdivisions. He said a change in the distribution of the state's share of the revenue would not affect the tribes.

Representative Onstad expressed concern that the tribes' share of gross production and oil extraction tax revenue was to be in lieu of the TERO fee, but this one-time fee has been allowed based on the Governor's interpretation that the fee is not based on oil production and therefore in compliance with the statute.

Representative Meyer requested information from the Tax Department regarding an estimate of distributions to political subdivisions under the agreement if the "hold harmless" provision would have been enacted.

Senator Stenehjem requested the information include distributions to political subdivisions resulting from the tribal oil agreement.

## **DEPARTMENT OF TRANSPORTATION**

Mr. Grant Levi, Deputy Director for Engineering, Department of Transportation, presented information regarding the anticipated use of state, federal, emergency, and other highway funding during the 2010 construction season pursuant to 2009 Senate Bill No. 2012. A copy of the information presented is on file in the Legislative Council office. He said federal carryover apportionment and recently received apportionment of approximately \$77 million provide a total of \$139 million in federal apportionment available to spend on the department's regular 2010 construction program. He said the size of the 2010 construction program is uncertain until Congress either replaces or extends the federal transportation bill. He said the delay in funding will delay bidding and make it difficult for the department to complete some projects this season.

Mr. Levi said the ARRA allocation provided approximately \$170 million, of which \$90 million was used for projects in 2009 and \$80 million will be used for projects in 2010. He said 2010 ARRA projects include:

- 23 state projects totaling \$64 million;
- 20 urban projects totaling \$7 million;
- 7 county projects totaling \$4 million; and
- 20 transportation enhancement projects totaling \$5 million.

Mr. Levi said the department will also contract for emergency relief projects totaling \$158 million, of which \$154 million is in the Devils Lake Basin.

## HEALTH INFORMATION TECHNOLOGY ADVISORY COMMITTEE

Mr. Sheldon Wolf, North Dakota Health Information Director, Information Technology Department, presented information regarding the status of health information technology activities pursuant to 2009 Senate Bill No. 2332. A copy of the information presented is on file in the Legislative Council office. He said a health information technology summit in 2006 resulted in the Health Information Technology (HIT) Steering Committee. He said the committee identified the following four recommendations, which were the basis for 2009 Senate Bill No. 2332:

- Establish a HIT office;
- Continue the HIT Steering Committee in statute as the HIT Advisory Committee;
- Make available state funds to be used for the required match to compete for federal stimulus HIT grant opportunities; and
- Establish a grant or loan program unrelated to federal stimulus funds to assist providers with startup costs for electronic health record implementation in order to qualify for federal Medicare and Medicaid meaningful use incentives.

Mr. Wolf said 2009 Senate Bill No. 2332 established a health information technology planning revolving loan fund to receive federal funds and provide loans to health care providers to purchase and upgrade electronic health record technology, train personnel, and improve security. He said no federal funds have been available and he is uncertain when the funding will be released.

Mr. Wolf said 2009 Senate Bill No. 2332 established a health information technology planning revolving loan fund to provide low-interest loans to health care entities to assist in improving health information technology infrastructure. He said the bill also provided for a \$5 million contingency appropriation from the earnings and accumulated undivided profits of the Bank of North Dakota to the fund. He said the contingency was met when actual general fund revenues for the period July 1, 2009, through September 30, 2009, exceeded the estimated general fund revenues for the period by at least \$22.5 million. He said when the \$5 million became available, loan criteria was established for loans to providers, hospitals, and multiprofessional entities.

Mr. Wolf said the HIT Advisory Committee has been formed and meets on a regular basis.

Mr. Wolf said the state was not successful in the first round of federal grants available to support states in establishing health information exchange capacity among health care providers and hospitals in their jurisdictions. He said approximately \$5.34 million is available to the state and he anticipates the state will be approved in the next round. He said as part of the agreement, a strategic and operational plan must be completed and submitted for approval. He said even though the grant has not been awarded, the advisory

committee workgroups continue to meet and plan for the health information exchange. He said it is anticipated implementation of the statewide health information exchange will begin in early 2011 once the strategic and operational plan are approved. He said there has been no activity in the electronic health information exchange fund, established to handle federal and other funds used to facilitate and expand electronic health information exchange.

Mr. Wolf said up to \$8 million is available for transfer from the Bank of North Dakota to the health information technology planning revolving loan fund or the electronic health information exchange loan fund to provide the required match for federal funds, but no federal funds have been made available for these loans.

Mr. Wolf said the 2009 Legislative Assembly provided \$350,000 from the general fund to defray the costs of the HIT Advisory Committee and the HIT office. He said expenditures through January 2010 totaled \$71,356.

In response to a question from Senator Mathern, Mr. Wolf said the strategic and operational plan will address the ability of the Medicaid management information system to communicate with other health information technology systems.

In response to a question from Representative Meyer, Mr. Wolf said the HIT Advisory Committee is responsible for health information technology in North Dakota, but the system will be designed to connect to the national health information network so medical records will be available across in the country.

## TOBACCO PREVENTION AND CONTROL COMMITTEE

Chairman Holmberg called on Ms. Jeanne Prom, Executive Director, Center for Tobacco Prevention and Control Policy, to present information regarding the implementation of the comprehensive tobacco prevention and control plan pursuant to 2009 House Bill No. 1015. A copy of the information is on file in the Legislative Council office. Ms. Prom said the 2009-11 biennium appropriation for the Tobacco Prevention and Control Committee is \$12.9 million. She said through February 2010 the Tobacco Prevention and Control Committee spent \$1.6 million of its appropriation, including \$1.5 million for grants to local public health units. She said two types of grants were awarded, including \$470,000 for tobacco state aid grants and \$1.1 million for tobacco prevention grants. She said \$352,500 of the \$470,000 available for tobacco state aid grants for the fiscal year has been distributed. In addition, she said, tobacco prevention grants totaling \$1.1 million have been sent to local agencies to fund local tobacco prevention and control activities. She said all 28 local public health units have developed policies and submitted implementation plans to include public health service guidelines relating to tobacco use in their client-based programs. She said the executive committee has

hired an administrative assistant. She said the executive committee will complete the hiring and orientation of staff, complete the health communication plan, develop the evaluation plan, and continue to work with the State Department of Health and local public health units and other partners to implement the work plans.

In response to a question from Representative Carlson, Ms. Prom said the first few months of the biennium were spent securing space and hiring staff. She said the executive committee anticipates spending its entire appropriation by the end of the biennium.

In response to a question from Representative Carlson, Ms. Prom said the committee collaborates with the State Department of Health. She said the executive committee and the State Department of Health each have their distinct roles and responsibilities to meet the goals of the comprehensive program.

In response to a question from Senator Kilzer, Ms. Prom said the Emergency Commission request approved by the Budget Section earlier to increase federal fund authority for the State Department of Health includes funding for a survey, the results of which will be shared with the executive committee.

In response to a question from Senator Kilzer, Ms. Prom said the executive committee expects to see tangible results of its program within five years.

### **VETERANS' HOME REPORT**

Chairman Holmberg announced that the Legislative Council staff distributed to each member a written summary report from the Veterans' Home project manager regarding the status of the Veterans'

Home construction project pursuant to 2009 Senate Bill No. 2007. A copy of the report is on file in the Legislative Council office.

### **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

Chairman Holmberg announced the next meeting of the Budget Section is tentatively scheduled for Tuesday, June 22, 2010.

Representative Boucher requested that the North Dakota State University Foundation present information at the next meeting of the Budget Section regarding the written report distributed by the University System office on behalf of the foundation regarding the use of foundation funds.

**It was moved by Senator Grindberg, seconded by Representative Kroeber, and carried on a voice vote that the Budget Section meeting be adjourned subject to the call of the chair.**

Chairman Holmberg adjourned the meeting at 3:10 p.m.

---

Sheila M. Sandness  
Fiscal Analyst

---

Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:2