

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

BUDGET SECTION

Tuesday, June 19, 2012
Brynhild Haugland Room, State Capitol
Bismarck, North Dakota

Senator Tony Grindberg, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Tony Grindberg, Randel Christmann, Ray Holmberg, Karen K. Krebsbach, David O'Connell, Larry Robinson, Mac Schneider, Ryan M. Taylor, Terry M. Wanzek, Rich Wardner, John Warner; Representatives Larry Bellew, Michael D. Brandenburg, Al Carlson, Stacey Dahl, Jeff Delzer, Mark A. Dosch, David Drovdal, Eliot Glassheim, Kathy Hawken, Lee Kaldor, Jerry Kelsh, Keith Kempenich, Matthew M. Klein, Gary Kreidt, Joe Kroeber, Bob Martinson, Ralph Metcalf, David Monson, Jon Nelson, Chet Pollert, Bob Skarphol, Blair Thoreson, Don Vigesaa, Alon Wieland, Clark Williams

Members absent: Senators Bill Bowman, Robert Erbele, Ralph L. Kilzer

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

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

It was moved by Senator Robinson, seconded by Representative Carlson, and carried on a voice vote that the minutes of the March 13, 2012, meeting be approved as distributed.

ADJUTANT GENERAL REPORTS

Chairman Grindberg called on Major General David Sprynczynatyk, Adjutant General, to provide an update ([Appendix B](#)) on 2011 flood disasters and related expenditures. Major General Sprynczynatyk said estimated 2011 flood disaster costs relating to public response, recovery, and mitigation total \$737 million as of June 12, 2012, of which the estimated state share is \$36.1 million. He said this estimate does not include Small Business Administration (SBA) loans (\$256 million as of June 12, 2012) or individual home and business owner damages (\$452 million estimated as of June 12, 2012). He presented the following projections relating to estimated public response, recovery, and mitigation flood costs:

	Current Projection (Amounts Shown in Millions)	State Share (Amounts Shown in Millions)	State Share Description
State indirect	\$24.0	\$1.7	Mission assignments require 7 percent state match and 3 percent local share.
Public infrastructure	270.0	18.9	10 percent match - State will provide 7 percent (4 percent state share plus 3 percent for one-half of the 6 percent local share pursuant to provisions of 2011 SB 2369).
Individual assistance	325.0	1.3	The other needs assistance category of individual assistance requires a 25 percent match. The transitional housing assistance match is estimated at \$2 million.
Hazard mitigation	118.0	14.2	25 percent match - State will provide 17.5 percent (10 percent state share plus 7.5 percent for one-half of the 15 percent local share pursuant to provisions of SB 2369).
Total	\$737.0	\$36.1	

Major General Sprynczynatyk said the projected ending balance in the state disaster relief fund is \$9.98 million for the 2011-13 biennium. He said this estimated balance includes expenditures for known disasters, and the balance will change if other disasters occur. He provided the following analysis of projected biennial expenditures and associated Emergency Commission and Budget Section approvals:

Disaster	Actual Expenditures Through April 2012	Projected Biennial Expenditures	Emergency Commission and Budget Section Approvals	Pursuant to
State match for disasters prior to 2009	\$766,548	\$1,225,298 ¹	\$1,091,013	Section 1 of 2011 SB 2016
2009 flood	1,357,260	6,829,620 ¹	4,820,828	Section 1 of 2011 SB 2016
January 2010 winter storm		507,831	565,527	Section 15 of 2011 SB 2371
2010 flood	7,396	2,251,315 ¹	1,885,457	Section 15 of 2011 SB 2371
April 2010 ice storm		1,185,314 ¹	1,142,381	Section 15 of 2011 SB 2371
2011 flood	4,828,842	21,225,205	29,205,205	Section 5 of 2011 SB 2016 (\$3.5 million) Section 4 of 2011 SB 2369 (\$14 million) Section 15 of 2011 SB 2371 (\$11,705,205)
Disaster response coordination	63,000	400,000	400,000	Section 4 of 2011 SB 2016
Flood mitigation in incorporated cities	660,132	3,200,000	3,200,000	Section 4 of 2011 SB 2369
Road grade raising projects		4,800,000	4,800,000	Section 4 of 2011 SB 2369
Flood-impacted housing rehabilitation	2,174,150	10,000,000	10,000,000	Section 9 of 2011 SB 2371
Contingent 2012 disaster exceeding \$50 million		5,000,000		Section 16 of 2011 SB 2371
Total	\$9,857,328	\$56,624,583	\$57,110,411	

¹If actual expenditures per disaster exceed the amount approved for the 2011-13 biennium by the Emergency Commission and Budget Section, the Adjutant General will need to request approval for such expenditures pursuant to North Dakota Century Code Section 37-17.1-27.

LAKE REGION STATE COLLEGE WIND TURBINE PROJECT - CHANGE OF SCOPE OF PROJECT

Mr. Doug Darling, Interim President, Lake Region State College, Devils Lake, presented a request ([Appendix C](#)) for Budget Section approval for a change in scope and an increase in the cost of the wind turbine project under Section 48-01.2-25. He said a change in the location of the turbine is requested because the original location on campus property was disapproved by the Federal Aviation Administration due to the proximity to the Devils Lake Regional Airport runway. He said a land lease and easement has been negotiated with a private landowner approximately 3.2 miles northwest of the campus and subsequently approved by the Public Service Commission and the Federal Aviation Administration. He said an increase in the project authorization by \$1,049,216, from \$6,132,000 to \$7,181,216, to be paid from an energy performance contract is requested for relocation costs and inflationary costs due to project delays.

It was moved by Representative Monson, seconded by Representative Nelson, and carried on a roll call vote that the Budget Section approve under Section 48-01.2-25 the Lake Region State College request for a change in project scope relating to the location of the wind turbine and to increase the project authorization by \$1,049,216, from \$6,132,000 to \$7,181,216, to be paid from an energy performance contract. Senators Grindberg,

Christmann, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Carlson, Dahl, Delzer, Dosch, Drovdal, Glassheim, Hawken, Kelsh, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigasaa, Wieland, and Williams voted "aye." Representative Kempenich voted "nay."

STATUS OF THE GENERAL FUND

Ms. Pam Sharp, Director, Office of Management and Budget, presented the following information ([Appendix D](#)) on the status of the state general fund for the 2011-13 biennium:

Unobligated general fund balance - July 1, 2011		\$996,832,711
Add		
General fund collections through May 2012	\$2,281,902,979	
Forecasted general fund revenue for the remainder of the 2011-13 biennium	1,827,511,461	
Total estimated general fund revenue for the 2011-13 biennium		\$4,109,414,440
Balance obligated for authorized carryover from the 2009-11 biennium		106,945,443
Estimated total available		\$5,213,192,594

Less		
2011-13 biennium general fund ongoing appropriations	(\$3,532,895,032)	
2011-13 biennium general fund one-time appropriations	(533,958,760)	
2011-13 biennium special legislative session appropriations	(169,832,668)	
Balance obligated for authorized carryover from the 2009-11 biennium	(106,945,443)	
2011-13 biennium emergency appropriations utilized in the 2009-11 biennium	519,254	
Estimated deficiency requests		
Department of Human Services - Accelerated 2013-15 biennium federal medical assistance percentage (FMAP) costs	(21,200,000) ¹	
Total appropriations and estimated deficiency requests		(\$4,364,312,649)
Estimated general fund balance - June 30, 2013		\$848,879,945 ²

¹The Department of Human Services anticipates requesting a deficiency appropriation related to the FMAP rate dropping to 52.27 percent in fiscal year 2012 at an estimated cost to the state of \$21.2 million. The department anticipates that in the 2013-15 biennium the FMAP rate is likely to decrease to the minimum of 50 percent.

²Pursuant to Section 54-27.2-02, any end-of-biennium balance in excess of \$65 million must be transferred to the budget stabilization fund, up to a cap of 9.5 percent of general fund appropriations. This amount does not reflect any potential transfers.

Ms. Sharp presented information on general fund revenue collections for May 2012 and the 2011-13 biennium to date. She said general fund revenues collected biennium to date are \$651.67 million or 40 percent more than the April 2011 legislative forecast. She said sales tax collections have exceeded estimates by \$328.3 million, or 52.6 percent, and individual income tax collections have exceeded estimates by \$151.5 million, or 60 percent. She said motor vehicle excise tax collections have exceeded estimates by \$30.7 million, or 37.9 percent.

ECONOMIC INDICATORS

Ms. Sharp presented statistics on the oil industry. She provided average monthly oil statistics from January 2012 to March 2012, including a history of price per barrel, production, and drilling activity. She said the posted price per barrel of oil in March 2012

was \$84.73 per barrel, production in March 2012 was approximately 575,500 barrels per day, and the May 2012 rig count was 214 rigs. She said the rig count has increased by 45 rigs compared to the number operating in May 2011. She said current production and price is more than the April 2011 legislative forecast, which based oil production increasing from 390,000 barrels to 425,000 barrels per day during the 2011-13 biennium and prices ranging from \$72 to \$75 per barrel.

IRREGULARITIES IN THE FISCAL PRACTICES OF THE STATE

Pursuant to Section 54-14-03.1, Ms. Sharp presented information on irregularities in the fiscal practices of the state. She said for the period February 2012 through April 2012, there was one state agency with a fiscal irregularity as follows:

Agency	Amount	Reason
Department of Corrections and Rehabilitation	\$20,000	Severance pay for a full-time equivalent (FTE) position reassigned from Bismarck to the Williston Parole and Probation District

TOBACCO SETTLEMENT PROCEEDS

Ms. Sharp presented information on the status of tobacco settlement proceeds received by North Dakota. She said total payments received to date are \$367.8 million, and the next payment is anticipated to be received in April 2013. She said the April 2012 payment totaled \$31.5 million, of which \$20.1 million was deposited in the tobacco settlement trust fund and \$11.4 million was deposited in the tobacco prevention and control trust fund. A summary of recent collections is listed below.

	Tobacco Settlement Trust Fund (Amounts Shown In Millions)	Tobacco Prevention and Control Trust Fund (Amounts Shown In Millions)	Total (Amounts Shown In Millions)
April 2010	\$20.8	\$12.3	\$33.1
April 2011	19.7	11.2	30.9
April 2012	20.1	11.4	31.5
Total	\$60.6	\$34.9	\$95.5

STATE AGENCY APPLICATIONS FOR FEDERAL GRANTS

Ms. Sharp presented information ([Appendix E](#)) on state agencies that applied for federal grants estimated to be \$25,000 or more pursuant to Section 54-27-27. She said this section requires the Office of Management and Budget (OMB) to present at each meeting of the Budget Section reports received from state agencies, other than entities under the control of the State Board of Higher Education, that have applied for federal grants estimated to be \$25,000 or more. She said this reporting requirement became

effective July 1, 2011. She said for the period March 2012 through June 19, 2012, the following agencies applied for a federal grant estimated to be \$25,000 or more:

Agency	Time Period of Grant	Amount	Title of Grant
Department of Public Instruction	September 2012 through September 2014	\$244,742	2012 team nutrition training grant
Department of Commerce	To be determined	\$1,000,000	Revolving loan fund - Energy efficiency local government and public school buildings
Job Service North Dakota	July 2012 through June 2014	\$10,154,392	United States Department of Labor - Demonstration grant
Department of Agriculture	N/A	\$51,241	Special Nutrition Programs Farm to School Grant Program

STATE BOARD OF HIGHER EDUCATION - MONTHLY PROJECT VARIANCE REPORTS

Ms. Sharp presented monthly project variance reports ([Appendix F](#)) on State Board of Higher Education projects pursuant to Section 15-10-47. She said this section requires that whenever any new construction, renovation, or repair, valued at more than \$250,000 is underway on the campus of an institution of higher education under the control of the State Board of Higher Education, the State Board of Higher Education must provide OMB with monthly project variance reports. She said the monthly project variance reports must include:

- Name or description of the project.
- Expenditure authorized by the Legislative Assembly.
- Amount of the original contract.
- Amount of any change orders and description.
- Amount of any potential or anticipated change orders.
- Sum of the original contract, change orders, and potential or anticipated change orders and the amount by which that sum varies from the expenditure authorized by the Legislative Assembly.
- Total expenditures to date.
- Scheduled date of completion as noted in the original contract and the latest available scheduled date of completion.
- List of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project.

Ms. Sharp said the change order details are not included in the report provided to the Budget Section but are available from OMB upon request. She said

the State Architect reviews change orders and project progress monthly as reports are received.

AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION

Chairman Grindberg directed the Budget Section to consider agency requests, which have been authorized by the Emergency Commission and forwarded to the Budget Section pursuant to Section 54-16-04.1. He said the information relating to the requests ([Appendix G](#)) was provided to Budget Section members prior to the meeting.

It was moved by Representative Nelson, seconded by Senator Robinson, and carried on a roll call vote that pursuant to Chapter 54-16 the Budget Section approve the Department of Commerce request (Request #1798), which has been approved by the Emergency Commission, to increase spending authority by \$7 million of federal fiscal stimulus funding from the American Recovery and Reinvestment Act (ARRA) of 2009 that remains available to the state for grants to increase the energy efficiency of buildings, facilities, or processes. Senators Grindberg, Christmann, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Carlson, Dahl, Delzer, Dosch, Drovdal, Glassheim, Hawken, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigesaa, and Wieland voted "aye." No negative votes were cast.

In response to a question from Senator Wardner regarding Emergency Commission Request #1799 relating to the Secretary of State's request to transfer \$295,000 between line items for an addition of three FTE positions, Ms. Sheila Peterson, Director of Fiscal Management, Office of Management and Budget, said temporary positions were not considered because job responsibilities include the reviewing and processing of complex business documents requiring extensive training which would not be appropriate for a temporary position. She said the level of applications being processed is not expected to decrease, and the Secretary of State anticipates requesting additional FTE positions for the 2013-15 biennium.

In response to a question from Senator Robinson, Mr. Alvin A. Jaeger, Secretary of State, said the three FTE positions would be new hires and not staff currently filling temporary positions.

In response to a question from Representative Carlson, Mr. Jaeger said his office is in the process of implementing a system to manage online form processing and expects online functionality to be available prior to the 2013-15 biennium. He said efficiencies gained by online processing may reduce some workload; however, office staff will still need to review information submitted. He said the request includes funding for overtime and salary adjustments to retain key staff members.

It was moved by Senator Holmberg, seconded by Representative Carlson, and carried on a roll call vote that pursuant to Chapter 54-16 the Budget Section approve the Secretary of State request (Request #1799), which has been approved by the Emergency Commission, for three new FTE positions and to transfer \$295,000 from the operating expenses line item to the salaries and wages line item for the additional FTE positions, overtime, temporary staff, and salary adjustments to retain personnel. Senators Grindberg, Christmann, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Carlson, Dahl, Delzer, Dosch, Drovdal, Glassheim, Hawken, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigesaa, Wieland, and Williams voted "aye." Representative Bellew voted "nay."

It was moved by Representative Martinson, seconded by Senator Warner, and carried on a voice vote that the Budget Section encourage the Secretary of State to resume public office hours of 8:00 a.m. to 5:00 p.m. weekdays.

Mr. Jaeger said he plans to revert to regular office hours once the workload is manageable and services offered by his office are not hindered. He said even with overtime and temporary staff, his office was not responding to its customers timely. He said the office is currently open to the public six hours a day, and the remainder of the workday is utilized by staff to process applications. He said by reducing hours open to the public, office staff is more productive processing applications and responsive to customer requests.

STATE WATER COMMISSION - GRANTS FROM THE RESOURCES TRUST FUND

Mr. Dave Laschkewitsch, Administrative Services Director, State Water Commission, presented a request ([Appendix H](#)) for Budget Section approval pursuant to 2011 Senate Bill No. 2371 and Section 4 of 2011 Senate Bill No. 2020 to spend additional funding available in the resources trust fund. He said Senate Bill No. 2371 appropriated \$50 million from the resources trust fund to the State Water Commission subject to Budget Section approval. He said the commission is requesting to utilize the remaining \$12,736,000 of additional funding available in the resources trust fund. If approved, he said, the \$50 million appropriation would be allocated as follows:

SB 2371 appropriation from the resources trust fund		\$50,000,000
Request for Budget Section approval June 2012		
Burleigh County storm water pump station	\$1,282,400	
City of Sawyer property acquisitions	184,260	
Mouse River additional engineering for flood protection plan	1,926,750	
Future property acquisitions for flood control in McHenry and Ward Counties and the city of Minot as determined by the State Water Commission	9,342,590	
Approved by Budget Section March 2012		
Burleigh County property acquisitions	1,425,000	
City of Minot	17,750,000	
City of Burlington	1,039,000	
Ward County	11,500,000	
December 2011		
City of Minot	2,500,000	
City of Valley City	3,000,000	
Souris River Joint Water Resource District	50,000	
Total 2011-13 biennium requests		\$50,000,000
Remaining funding		\$0

It was moved by Senator Robinson, seconded by Senator O'Connell, and carried on a roll call vote that the Budget Section approve the State Water Commission's request pursuant to provisions of Senate Bill No. 2371 and Section 4 of Senate Bill No. 2020 to spend \$12,736,000 of additional funding available in the resources trust fund for the Burleigh County storm water pump station (\$1,282,400), for the city of Sawyer (\$184,260), for additional engineering on the Mouse River flood protection plan (\$1,926,750), and for future property acquisitions for flood control in McHenry and Ward Counties and the city of Minot as determined by the State Water Commission (\$9,342,590). Senators Grindberg, Christmann, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Carlson, Dahl, Delzer, Dosch, Drovdal, Glassheim, Hawken, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigesaa, Wieland, and Williams voted "aye." No negative votes were cast.

Mr. Laschkewitsch presented a summary of 2011-13 biennium to date activity of the resources trust fund. He said as of May 2012, oil extraction taxes deposited into the resources trust fund totaled \$127,681,003 which exceeds the budget estimate as of May 2012 by \$48.46 million or 61 percent. He said a revised estimate that reflects actual oil extraction tax collections through May 2012 with budgeted revenue

amounts for the remainder of the 2011-13 biennium provides an ending balance in the resources trust fund of \$17.78 million.

GAME AND FISH DEPARTMENT LAND ACQUISITIONS

Mr. Terry Steinwand, Director, Game and Fish Department, presented information regarding a land acquisition that requires Budget Section approval pursuant to Section 20.1-02-05.1. He provided background information and a map of the proposed land acquisition ([Appendix I](#)). He said the property consists of 1,793.36 acres of Johnson Farms property that is located six to eight miles southwest of Edmore in Triumph and Fancher Townships. He said the property is located near the Edmore Coulee, a direct inlet to Devils Lake, and has a high abundance of wetlands scattered throughout the property making traditional agricultural use difficult. He said the \$2.22 million purchase, based on an appraisal completed in July 2011 by Mr. Paul Vorachek of AgCountry Farm Credit Services of Grand Forks, will be paid for with \$175,000 from the game and fish fund, \$1,244,000 from the United States Department of Agriculture Natural Resources Conservation Service Wetland Reserve Program, \$601,000 from a federal North American Wetlands Conservation Act grant, \$125,000 from the State Water Commission, and \$75,000 from the North Dakota Natural Resources Trust. He said the Governor has approved the purchase.

In response to a question from Representative Drovdal, Mr. Steinwand said the land would be part of the Wetland Reserve Program, requiring a 30-year contract and one-time payment to the landowner.

In response to a question from Senator Wanzek, Mr. Steinwand said an application was submitted and a grant approved under the federal North American Wetlands Conservation Act; however, the land is not enrolled in the conservation program. He said \$1,244,000 will be paid for enrollment of the land.

It was moved by Representative Kaldor, seconded by Representative Kroeber, and carried on a roll call vote that pursuant to Section 20.1-02-05.1 the Budget Section approve that the Game and Fish Department purchase 1,793.36 acres of Johnson Farms property. Senators Grindberg, Holmberg, Krebsbach, O'Connell, Robinson, Taylor, Wanzek, Wardner, and Warner and Representatives Brandenburg, Carlson, Dahl, Glassheim, Hawken, Kaldor, Kroeber, Martinson, Metcalf, and Monson voted "aye." Senator Christmann and Representatives Bellew, Delzer, Drovdal, Kempenich, Klein, Kreidt, Nelson, Pollert, Skarphol, Vigasaa, and Wieland voted "nay."

STATE AGENCY UNCLAIMED PROPERTY

Chairman Grindberg called on Ms. Linda Fisher, Administrator, Unclaimed Property Division, Department of Trust Lands, to present a report

([Appendix J](#)) regarding state agencies that have not submitted a claim for unclaimed property belonging to those agencies pursuant to Section 47-30.1-24.1.

Ms. Fisher said the Legislative Assembly in 2003 enacted Section 47-30.1-24.1 in an effort to resolve the issue of state agency unclaimed property. She said this section provides that within one year of receipt of state agency property, the administrator of unclaimed property is to notify the agency by certified mail; the Commissioner of University and School Lands is to present a report to the Budget Section identifying every state agency that has not submitted a claim for property belonging to that agency within one year of the date of the certified mail receipt; and upon approval of the Budget Section, the agency relinquishes its right to recover its property. She presented a list of five state agencies (15 properties) that did not respond to the certified mailing--North Dakota State University (3 properties), University of North Dakota (5 properties), Bank of North Dakota (4 properties), Indian Affairs Commission (1 property), and State Department of Health (2 properties).

In response to a question from Representative Monson, Ms. Fisher said 7 of the 12 agencies with unclaimed property made claim to 13 of 28 unclaimed properties as a result of the Department of Trust Lands' efforts to contact agencies. She said five agencies with 15 unclaimed properties did not respond or claim properties and that these properties upon Budget Section approval will be donated to the common schools trust fund.

It was moved by Representative Skarphol, seconded by Representative Monson, and carried on a roll call vote that pursuant to Section 47-30.1-24.1 the Budget Section approve the list provided by the Department of Trust Lands of the following state agencies relinquishing their rights to recover unclaimed property:

- North Dakota State University;
- University of North Dakota;
- Bank of North Dakota;
- Bank of North Dakota - Student Loans of North Dakota;
- Indian Affairs Commission;
- State Department of Health; and
- State Department of Health - Consolidated Laboratories.

Senators Grindberg, Christmann, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Carlson, Dahl, Delzer, Dosch, Drovdal, Glassheim, Hawken, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigasaa, Wieland, and Williams voted "aye." No negative votes were cast.

NORTH DAKOTA UNIVERSITY SYSTEM - CHANGE IN SCOPE OF PROJECTS

Chairman Grindberg called on representatives of the North Dakota University System to present information ([Appendix K](#)) regarding requests for Budget Section approval of changes to the following project authorizations pursuant to Sections 48-01.2-25 and 15-10-12.1.

North Dakota State University - Gate City Bank Auditorium

Mr. Mike Ellingson, Director of Facilities Management, North Dakota State University, Fargo, presented a request for Budget Section approval under Section 15-10-12.1 to authorize the Gate City Bank Auditorium project in the amount of \$450,000 to be paid from a private donation (Gate City Bank - \$410,000) and extraordinary repairs funding (\$40,000). He said the auditorium, formerly named Stevens Hall Auditorium, was renamed the Gate City Bank Auditorium due to receipt of the private donation. He said the project initially included new seating, upgrades to renovation and finishes, and technology equipment at a cost of \$380,000 and that the project has been revised to include restrooms and renovation of the front corridor for a total cost of \$450,000 per the private donor's request.

In response to a question from Representative Delzer, Mr. Ellingson said the extraordinary repairs funding of \$40,000 had been earmarked for the auditorium prior to the Gate City Bank donation. He said Gate City Bank established an endowment of \$100,000 for purposes of upkeep and maintenance.

Representative Skarphol asked the Legislative Council staff to gather information on the expected reduction in deferred maintenance as a result of the auditorium renovation.

In response to a question from Senator Robinson, Mr. Ellingson said proper notifications have been made regarding the planned name change from Stevens Hall Auditorium to Gate City Bank Auditorium.

Representative Dosch requested information from the Legislative Council staff regarding State Board of Higher Education policies on naming rights for facilities.

It was moved by Representative Thoreson, seconded by Representative Wieland, and carried on a roll call vote that the Budget Section approve the University System request under Section 15-10-12.1 to authorize the Gate City Bank Auditorium project. Senators Grindberg, Christmann, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Carlson, Dahl, Dosch, Drovda, Glassheim, Hawken, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigesaa, Wieland, and Williams voted "aye." Representative Delzer voted "nay."

Williston State College - Workforce Training Center Project

Ms. Deanette Piesik, Chief Executive Officer of TrainND, Williston State College, presented information regarding the Workforce Training Center project for Budget Section approval of a change in scope under Section 48-01.2-25 and an increase in the project authorization under Section 15-10-12.1. She said a change in scope is requested for Phase II of the project to add classroom and associated office space to the Petroleum Safety and Technology Center rather than two high bays and for Phase III to include a new building with 36,400 square feet rather than 15,600 square feet for classrooms, offices, a conference room, and a reception area for the TrainND Division. She said an increase in the project authorization by \$2,828,267, from \$3,910,000 to \$6,738,267, to be paid from private gift and grant funds is requested to provide for the additional costs associated with the changes in scope and also for rising costs of construction in the Williston area due to increased oil activity.

It was moved by Representative Skarphol, seconded by Representative Glassheim, and carried on a roll call vote that the Budget Section approve the Williston State College request relating to the Workforce Training Center project for a change in scope under Section 48-01.2-25 and an increase in the project authorization under Section 15-10-12.1 by \$2,828,267 from \$3,910,000 to \$6,738,267. Senators Grindberg, Christmann, Holmberg, Krebsbach, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Delzer, Dosch, Drovda, Glassheim, Hawken, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigesaa, Wieland, and Williams voted "aye." No negative votes were cast.

Bismarck State College - Student Union Project

Dr. Larry Skogen, President, Bismarck State College, presented a request for Budget Section approval under Section 48-01.2-25 to increase the project authorization of the Student Union project by \$1.5 million, from \$7.5 million to \$9 million, consisting of \$1.4 million from auxiliary reserves and \$100,000 from bond proceeds. He said the increase in costs is based on a revised estimate to complete the project and due to cost increases as a result of increased demand for construction services in the Bismarck area.

It was moved by Senator Robinson, seconded by Senator Holmberg, and carried on a roll call vote that the Budget Section approve the Bismarck State College request under Section 48-01.2-25 to increase the project authorization of the Student Union project by \$1.5 million to be paid from \$1.4 million from auxiliary reserves and \$100,000 from bond proceeds. Senators Grindberg,

Christmann, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Dosch, Glassheim, Hawken, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Wieland, and Williams voted "aye." Representatives Bellew, Brandenburg, Delzer, Drovdal, and Vigesaa voted "nay."

The Budget Section recessed for lunch at 12:05 p.m. and reconvened at 1:00 p.m.

2011-13 BIENNIUM REPORT ON COMPLIANCE WITH LEGISLATIVE INTENT

Chairman Grindberg called on the Legislative Budget Analyst and Auditor to present the [2011-13 Biennium Report on Compliance With Legislative Intent](#) and the analyses of [major state trust funds](#). The Legislative Budget Analyst and Auditor said the printed report is available upon request, and the Legislative Council staff will e-mail ([Appendix L](#)) all legislators within the next few weeks with links to the major items in the report.

IMPACT OF INCREASED OIL ACTIVITY ON SCHOOLS

Chairman Grindberg called on Dr. Kent Hjelmstad, Superintendent, Stanley Community Schools, to present information ([Appendix M](#)) on the impact of increased oil activity on schools. Dr. Hjelmstad said student enrollment is expected to increase in northwestern North Dakota as more housing becomes available. He said schools are estimating up to 3,000 new students in the 2012-13 school year, including almost 1,200 new students in Williston. He cited the following concerns regarding the rapid increase in student enrollment:

- School buildings and facilities are at capacity, and expansion is unable to keep pace with student enrollment due to funding limitations and the impacts of increased oil activity on construction.
- School equipment, such as desks, books, technology, and room supplies, are inadequate to provide for the increase in students.
- Additional school staff is needed for individualized education programs (IEPs) for the increasing number of students with disabilities.
- Additional funding is needed to compensate staff for the increased cost of living in oil-impacted areas, including housing assistance.
- Under current grant programs that address funding needs in areas affected by increased oil activity, schools must compete with other infrastructure requests for limited funding.
- Bus maintenance costs are increasing due to the impacts of driving on heavily traveled and damaged roads.

- Potential busdrivers with out-of-state commercial driver's licenses are unable to obtain North Dakota commercial driver's licenses in a timely manner to assist schools.

Senator Taylor asked that the Legislative Council staff prepare information regarding the functions of the Wyoming School Facilities Commission and whether any other states use similar commissions to address school building needs.

Representative Kaldor and Representative Kempenich requested information from the Legislative Council staff on loan funding that may be available to schools either through the state school construction loan fund or the common schools trust fund.

ETHANOL PLANTS RECEIVING PRODUCTION INCENTIVES

Mr. Justin Dever, Department of Commerce, presented information ([Appendix N](#)) regarding a reporting requirement under Section 17-02-01. He said Section 17-02-01 requires any North Dakota ethanol plant in operation before July 1, 1995, receiving production incentives from the state to file with the Budget Section within 90 days after the conclusion of the plant's fiscal year, a statement by a certified public accountant indicating whether the plant produced a profit during the preceding fiscal year after deducting incentive payments received from the state. He said that ethanol plants in operation before July 1, 1995, are no longer eligible to receive the production incentive that required reporting under Section 17-02-01. He said the incentive was phased out in the 2005-07 biennium; therefore, the Department of Commerce recommends that Section 17-02-01 be repealed.

CENTERS OF EXCELLENCE AND CENTERS OF RESEARCH EXCELLENCE AWARDS

Mr. Dever presented information ([Appendix N](#)) on centers of excellence and centers of research excellence awards. He said during the 2009-11 biennium, three centers of excellence awards were made totaling \$9,715,000, and nine centers of excellence enhancement grants were made totaling \$10 million as follows:

Centers of Excellence Awards 2009-11 Biennium	
Centers of excellence awards	
North Dakota State University Center for Advanced Technology Development and Commercialization	\$3,900,000
Centers for Sensors, Communications and Control	2,800,000
Center for Biopharmaceutical Research and Production 2.0	3,015,000
Subtotal	\$9,715,000

Centers of Excellence Awards 2009-11 Biennium	
Enhancement grants	
University of North Dakota	
Center of Excellence for Unmanned Aircraft Systems Research, Education, and Training	\$2,754,000
Grand Forks Air Force Base realignment business transition	200,000
North Dakota Unmanned Aircraft Systems Airspace Initiative	100,000
Unmanned aircraft systems software and curriculum development	600,000
Certificate programs for full motion video and activity-based intelligence analysis	746,000
V2 Aerospace, Inc., technical assistance	370,000
Law enforcement and public safety agency small unmanned aircraft systems course	230,000
North Dakota State University	
Research 1 expansion	4,000,000
Materials and Nanotechnology Center	1,000,000
Subtotal	\$10,000,000
Total	\$19,715,000

Mr. Dever said \$7,429,350 of the \$12 million provided for centers of research excellence grants in the 2011-13 biennium has been awarded. He said that remaining funding is available to provide a total of \$2.33 million for North Dakota State University centers of research excellence grants, \$1.24 million for University of North Dakota base realignment grants if committed within the first 18 months of the biennium, and \$1 million plus any funding from uncommitted base realignment grants for University of North Dakota centers of research excellence grants. He said awards to date in the 2011-13 biennium are as follows:

Centers of Research Excellence Awards 2011-13 Biennium	
Centers of research excellence awards	
North Dakota State University	
Center for Life Sciences Research and Applications	\$1,350,000
Center for Technologically Innovative Processes and Products	320,000
Subtotal	\$1,670,000
Limited deployment-cooperative airspace project grants	
University of North Dakota	\$2,700,000
North Dakota State University	1,300,000
Subtotal	\$4,000,000
Base realignment grants	
University of North Dakota	
Global Hawk sensor operator part task trainer	\$878,204
North Dakota Unmanned Aircraft Systems Airspace Initiative (Phase 2)	255,440
Airspace Integration Team - Unmanned Aircraft Systems National Test Site	500,000
University of North Dakota - Center for Innovation Foundation	
Joint Distributed Common Ground System	125,706
Enhanced Use Lease (EUL) - Grand Forks Air Force Base	486,750
Subtotal	\$2,246,100
Total	\$7,916,100

CENTERS OF EXCELLENCE AUDIT AND MONITORING REPORTS

Mr. Dever presented information ([Appendix O](#)) on the monitoring reports and annual audit reports of centers of excellence and centers of research excellence pursuant to Sections 15-69-05(2) and 54-65-03. He said the centers of research excellence program began in the 2011-13 biennium and reports for this program will not be available until fiscal year 2013. He said state statute requires each center of excellence to undergo financial audits after two fiscal years of operation and at the conclusion of expending all award funds. He said agreed-upon procedures engagements are required for years that a center of excellence does not have a full fiscal audit conducted. He said most findings were administrative in nature, and the findings have been addressed and corrected or will be addressed and corrected if the items related to methodologies of the annual functional performance report.

Mr. Dever said state statute requires the Centers of Excellence Commission to monitor each centers of excellence award for a period of 6 years to 10 years, monitoring begins after the center has been in existence for at least three fiscal years. He said as of the end of the 2011 fiscal year, 11 centers had been in existence three fiscal years. He said of the 11 centers, 9 were determined to have accomplished desired economic benefits while 2 did not receive this determination--Valley City State University's Enterprise University and University of North Dakota Research Foundation's Center of Excellence in Life Sciences and Advanced Technologies - Research Enterprise and Commercialization Technology Accelerator facility.

In response to a question from Senator Holmberg, Mr. Dever said the Research Enterprise and Commercialization Technology Accelerator facility is working with a lender to restructure the center's debt. He said a portion of the balloon payment that was due in June 2012 has been extended by one year.

Mr. Dever discussed the *Centers of Excellence Annual Report 2011* ([Appendix P](#)). He said the estimated total economic impact to North Dakota's economy of the centers of excellence program is \$538.8 million. He said the centers of excellence have reported expenditures of \$33 million as of June 30, 2011. In addition, he said, the centers of excellence program has led to the creation of 973 jobs, engaged 185 partners with the centers, and assisted to start or significantly expand 21 businesses.

DEPARTMENT OF CORRECTIONS AND REHABILITATION - PRISON EXPANSION PROJECT

Mr. Dave Krabbenhoft, Administrative Director, Department of Corrections and Rehabilitation, presented a report ([Appendix Q](#)) on the prison expansion project pursuant to Section 5 of

2011 House Bill No. 1015. He said provisions of the bill require the Department of Corrections and Rehabilitation to provide quarterly reports to the Budget Section during the 2011-12 interim regarding the progress of the prison expansion project. He said the reports are to include any amounts and purposes of loans from the Bank of North Dakota to defray expenses of the project. He said the project is approximately 70 percent complete and on budget and on time. He said the department has not borrowed any funds from the Bank for expenses of the project. He said the project budget is \$64 million, and through May 2012, project expenditures have totaled \$41.1 million. He said the completion date is scheduled for December 2012, with demolition of the East Cellhouse and west security fencing scheduled to be completed in the spring of 2013.

STATE DEPARTMENT OF HEALTH - ENVIRONMENTAL PROTECTION AGENCY LITIGATION AND OTHER ADMINISTRATIVE PROCEEDINGS

Mr. David Glatt, Environmental Health Section Chief, State Department of Health, presented information ([Appendix R](#)) on United States Environmental Protection Agency (EPA) litigation and other administrative proceedings pursuant to Section 5 of 2011 House Bill No. 1004. He said the bill provides that the Budget Section receive quarterly reports from the State Department of Health during the 2011-12 interim regarding the status of any litigation and other administrative proceedings involving the EPA. He said the Legislative Assembly in 2011 provided \$1 million, \$500,000 from the general fund and \$500,000 from a line of credit at the Bank of North Dakota, for the purpose of defraying expenses associated with legal action against the EPA. He said as of June 2012, \$408,000 has been expended, and the \$500,000 line of credit has been requested from the Bank. Expenditures have been incurred for actions, including preparing, reviewing, and submitting legal briefs to several courts of competent jurisdiction regarding the following legal challenges:

- Sulfur dioxide one-hour standard - Relates to the state challenging an EPA proposition that requires states to utilize air quality models to determine compliance to established standards. The state presented arguments to the Circuit Court on May 3, 2012, and anticipates a formal decision within two months.
- Best available control technology - Relates to the federal Department of Justice and EPA challenge of the state's determination that selective noncatalytic reduction is the most appropriate control technology for Minnkota Power Cooperative, Inc., to control nitrogen oxide air emissions. In December 2011 the federal district court in Bismarck denied the United States' motions, finding that North

Dakota's determination that selective noncatalytic reduction is the best available control technology for the Milton R. Young Station.

- Regional haze state implementation plan - Relates to the EPA challenge of the state's proposed implementation plan to comply with requirements of the regional haze rule. On March 2, 2012, the EPA provided a final decision approving the majority of the state's plan, including approval of the state's selective noncatalytic reduction nitrogen oxide control technology to be installed on the Minnkota and Leland Olds power generation facilities. The EPA's final decision did not agree with the state's visibility modeling methodology and would require installation of appropriate combustion controls at the Antelope Valley Station and selective noncatalytic reduction at the Great River Energy Coal Creek Station. The State Department of Health anticipates challenging the federal implementation plan proposed by the EPA.
- Other state challenges to consent agreements which directly impact North Dakota but were developed between the EPA and environmental groups.

In response to a question from Representative Pollert, Mr. Glatt said he expects to request additional funding in the 2013-15 biennium for continued litigation and other administrative proceedings involving the EPA. He said the EPA is proceeding with its regulatory efforts and does not agree with state regulations. To protect its interests, he said, the state needs to continue its legal and administrative involvement.

INDUSTRIAL COMMISSION - ENVIRONMENTAL PROTECTION AGENCY LITIGATION AND OTHER ADMINISTRATIVE PROCEEDINGS

Mr. Lynn Helms, Director, Department of Mineral Resources, Industrial Commission, presented information ([Appendix S](#)) pursuant to Section 28 of 2011 Senate Bill No. 2371 on EPA litigation and other administrative proceedings. He said the bill provides that the Budget Section receive quarterly reports from the Industrial Commission during the 2011-12 interim regarding the status of any litigation and other administrative proceedings involving the EPA's effort to regulate hydraulic fracturing. He said the EPA has issued draft guidance for permitting hydraulic fracturing using diesel fuel in May, and comments regarding the guidance are due July 9, 2012. He said the final EPA guidance is expected in 90 days to 120 days after the comment period ends. He said if the final guidance contains the current broad definition of diesel fuels, requires an underground injection control permit if any portion of the injectate is a chemical defined as diesel fuel, or maintains the

explicit right to commence enforcement actions within primacy states, the Industrial Commission will need to initiate legal action.

In response to a question from Representative Dahl, Mr. Helms said the significance of a guidance document is that if unchallenged, it becomes similar to law.

STATUS OF PROVISIONS OF THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT

Chairman Grindberg called on Ms. Rebecca Ternes, Deputy Commissioner, Insurance Department, to present information ([Appendix T](#)) regarding the status of provisions of the federal Patient Protection and Affordable Care Act (PPACA) pursuant to Section 9 of 2011 Senate Bill No. 2010. Ms. Ternes said the Insurance Department continues to work with the United States Department of Health and Human Services (HHS) to comply with components of PPACA.

Ms. Ternes said HHS issued a bulletin outlining rulemaking on essential health benefits which requires a health insurance mandate decision regarding selection of a benchmark plan that provides a comprehensive package of coverage based on 10 categories determined by HHS. She said this decision is to be made by October 1, 2012; however, the Insurance Commissioner has requested an extension to allow time to analyze plans to HHS criteria and to educate the Legislative Assembly of available options. She said the Insurance Department is still awaiting a response from HHS. She said the Insurance Department is in the process of analyzing the benchmark options provided by the state employee benefit plan, the federal employee plans, the commercial HMO plans, and the small group plans and will present this information to the Health Care Reform Review Committee.

DEPARTMENT OF HUMAN SERVICES Status of Medicaid Management Information System Project

Ms. Jennifer Witham, Director, Information Technology Services, Department of Human Services, presented information ([Appendix U](#)) regarding the Medicaid management information system (MMIS) project. She said the MMIS project budget is \$71 million, and expenditures through April 2012 total \$44.5 million as presented on the following schedule:

Description	Budget	Spent Through April 2012	Remaining
General fund	\$6,098,318	\$3,120,076	\$2,978,242
Federal funds	62,730,093	39,219,874	23,510,219
Other funds	2,193,526	2,193,526	0
Total	\$71,021,937	\$44,533,476	\$26,488,461

Ms. Witham provided the following summary of each MMIS project component and the amount spent by component:

Component	Budget	Costs Through April 2012
MMIS	\$45,422,350	\$25,545,111
Provider management		
Member management		
Claims processing and payment		
• Prior authorization		
• Utilization review		
• Third-party liability		
• Recoupment		
• Estate recovery		
• Drug rebate		
Program management		
• Benefit administration and care management		
• Program integrity		
• Financial and program analysis and reporting		
Data warehouse system	5,000,000	2,725,000
Longitudinal financial analysis reporting		
Clinical outcome and disease management analysis		
Ad hoc reporting		
Independent verification and validation services	5,918,607	5,091,966
Overall quality assurance monitoring		
• System requirements and analysis		
• Code development		
• Data conversion		
• System testing		
Verifying the use of appropriate development methodologies and processes		
Validating the completeness and accuracy in all project reporting and deliverables		
Information Technology Department services	9,609,248	9,572,919
Project management services		
Software development		
Systems administration		
Other	5,071,732	1,598,480
Subject matter experts		
Facilities		
Total	\$71,021,937	\$44,533,476

Ms. Witham said Department of Human Services finalized negotiations with Xerox State Healthcare, formerly Affiliated Computer Services, in May 2012. She said Xerox agreed to reduce the project cost by \$1 million because of a seven-month project delay. She said an additional nine-month schedule delay is attributable to the inclusion of *International Classification of Diseases, Tenth Revision* (ICD-10) functionality into the North Dakota Health Enterprise. She said ICD-10 is a federal requirement which must be in place by October 2013. She said this functionality was not included in the original scope of the contract and will cost \$8,425,282. She said the inclusion of the ICD-10 functionality also affects the budget for other third-party vendors (\$678,211),

Information Technology Department (\$1,729,559), and Department of Human Services contract staff (\$63,747).

Ms. Witham said the project's executive steering committee has approved the increase to the project scope, and the department has sufficient funding within its current operating budget for the cost increase. She said the department is in the process of submitting an Implementation Advance Planning Document update to the Centers for Medicare and Medicaid Services regarding the changes.

Ms. Witham said that as of June 12, 2012, 31,765 Medicaid claims were in suspense compared to the previous claims in suspense.

As of	Claims in Suspense	Increase (Decrease) to Prior Report
June 12, 2012	31,765	11,868
March 6, 2012	19,897	(9,234)
December 6, 2011	29,131	5,793
September 7, 2011	23,338	(4,743)
June 16, 2011	28,081	1,374
December 6, 2010	26,707	

In response to a question from Senator Warner, Ms. Witham said ICD-10 extends the length of code to enable more items to be reported. She said ICD-10 is a significant change to programs, and it affects all providers. She said she does not expect ICD-11 to be required for a number of years. She said ICD-11 should not be as significant of a change as ICD-10.

TOBACCO PREVENTION AND CONTROL EXECUTIVE COMMITTEE

Chairman Grindberg announced that the Legislative Council staff distributed to each member a written summary report ([Appendix V](#)) from Ms. Jeanne Prom, Executive Director, Center for Tobacco Prevention and Control Policy, regarding the implementation of the comprehensive tobacco

prevention and control plan pursuant to 2011 House Bill No. 1025.

Senator Holmberg suggested the next report from the Center for Tobacco Prevention and Control Policy provide information explaining cigarette and tobacco tax increases and their relation to reports that state tobacco use is decreasing.

Representative Skarphol asked for information on cigarette tax rates of surrounding states.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Chairman Grindberg announced the next meeting of the Budget Section will be September 20, 2012.

Representative Skarphol asked that the Legislative Council staff prepare information regarding constitutional provisions that preclude the Legislative Assembly from supporting or opposing initiated measures.

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

Chairman Grindberg adjourned the meeting at 3:05 p.m.

Sara E. Pahlke
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH: 22