

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**BUDGET SECTION**

Thursday, September 20, 2012  
Senate Chamber, State Capitol  
Bismarck, North Dakota

Representative Chet Pollert, Vice Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Bill Bowman, Randel Christmann, Robert Erbele, Ralph L. Kilzer, 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, Jeff Delzer, Mark A. Dosch, Eliot Glasheim, Kathy Hawken, Jerry Kelsh, Keith Kempenich, 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 Tony Grindberg, Ray Holmberg, Karen K. Krebsbach; Representatives Stacey Dahl, David Drovdal, Lee Kaldor, Matthew M. Klein

**Others present:** Jim Schmidt, State Representative, Huff

Jim W. Smith, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Senator O'Connell, seconded by Representative Skarphol, and carried on a voice vote that the minutes of the June 19, 2012, meeting be approved as distributed.**

**STATUS OF THE GENERAL FUND**

Ms. Pam Sharp, Director, Office of Management and Budget, presented the following information ([Appendix B](#)) on the status of the state general fund for the 2011-13 biennium based on the September 2012 revised revenue forecast:

Unobligated general fund balance - July 1, 2011		\$996,832,711
Add		
General fund collections based on September 2012 preliminary forecast	\$4,860,559,531	
Total estimated general fund revenue for the 2011-13 biennium		\$5,857,392,242
Balance obligated for authorized carryover from the 2009-11 biennium		106,945,443
Estimated total available		\$5,964,337,685

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)	
State Department of Health	(582,894)	
Job Service North Dakota	(5,847)	
Highway Patrol	(500,000)	
Forest Service	(250,000)	
Tax Department	(981,855)	
State Fair	(1,397,630)	
Total appropriations and estimated deficiency requests		(\$4,368,030,875)
Estimated general fund balance - June 30, 2013		\$1,596,306,810

<sup>1</sup>Pursuant to North Dakota Century Code 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 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 August 2012 and the 2011-13 biennium to date. She said general fund revenues collected biennium to date are \$840 million or 41 percent more than the April 2011 legislative forecast. She said sales tax collections have exceeded estimates by \$450.6 million, or 56.1 percent, and individual income tax collections have exceeded estimates by \$183.7 million, or 58.2 percent. She said motor vehicle excise tax collections have exceeded estimates by \$40.6 million, or 39 percent.

In response to a question from Senator Taylor regarding oil and gas tax collections, Ms. Sharp said \$300 million of oil tax collections has been deposited into the general fund which is the biennial maximum. She said \$24.1 million of oil and gas tax collections was deposited into the strategic investment and improvements fund in August 2012. She said once \$100 million is deposited into the strategic investment and improvements fund, \$22 million will be deposited into the state disaster relief fund, and once that cap is reached funding will again be deposited into the strategic investment and improvements fund. She said the April 2011 legislative forecast assumed \$300 million would not be deposited into the general fund until March 2013.

### ECONOMIC INDICATORS

Ms. Sharp presented statistics on the oil industry. She provided average monthly oil statistics from January 2012 to June 2012, including a history of price per barrel, production, and drilling activity. She said the posted price per barrel of oil in June 2012 was \$73.21 per barrel, production in June 2012 was approximately 660,300 barrels per day, and the June 2012 rig count was 213 rigs. She said the current rig count is 191 rigs, 8 rigs fewer compared to the number operating in August 2011. She said current price is more than the September 2012 revised legislative forecast, which forecast prices of approximately \$70 per barrel during fiscal year 2013.

### PRELIMINARY 2009-11 BIENNIUM REVENUE FORECAST

Ms. Sharp presented information regarding the revised 2011-13 biennium revenue forecast and the preliminary 2013-15 biennium revenue forecast. She said 2011-13 biennium revised revenue forecast estimates total general fund revenues of \$4.2 billion, \$1.4 billion more than the 2011 legislative forecast. She said the preliminary 2013-15 biennium revenue forecast estimates total general fund revenues of \$4.9 billion, \$700 million more than the 2011-13 biennium revised forecast.

Ms. Sharp provided the oil price and production assumptions for fiscal years 2012 through 2015. The estimated average price per barrel and monthly production estimates are:

	Actual 2012 Fiscal Year	Estimated 2013 Fiscal Year	Estimated 2014 Fiscal Year	Estimated 2015 Fiscal Year
Price range (per barrel)	\$81-\$92	\$70	\$75	\$80
Production range (in barrels)	425,000- 680,000	680,000- 830,000	830,000- 850,000	850,000

Ms. Sharp provided the estimated oil tax revenue and revenue allocations for the revised 2011-13 forecast and the preliminary 2013-15 biennium forecast as follows:

	2011-13 Biennium (Amounts Shown in Millions)	2013-15 Biennium (Amounts Shown in Millions)
Estimated oil revenue allocations		
Counties, cities, schools	\$246.2	\$287.5
Tribal allocations	161.8	191.4
Resources trust fund	390.1	547.0
Common schools trust fund	195.1	273.4
Foundation aid stabilization fund	195.1	273.4
Oil and gas research fund	4.0	4.0
Oil and gas impact fund	100.0	100.0
General fund	300.0	300.0
Legacy fund	1,186.0	1,481.1
Property tax relief fund	341.8	341.8
State disaster relief fund	22.0	22.0
Strategic investment and improvements fund	687.5	1,306.7
Estimated state oil tax revenue	\$3,829.6	\$5,128.3

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

Ms. Sharp said in March 2012 the Budget Section approved the following changes to the 2013-15 biennium budget data pursuant to Section 54-44.1-07:

- Eliminate telecommute analysis data for new full-time equivalent (FTE) positions.
- Eliminate the printed copies of detailed budget data.

Ms. Sharp said other than these prior approvals, the Office of Management and Budget (OMB) does not have any additional proposed changes to the 2013-15 biennium budget data pursuant to Section 54-44.1-07.

## 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 May 2012 through August 2012, the fiscal irregularities are:

Agency	Amount	Reason
School for the Blind	\$5,214	Payment for three summer contracts outside of the academic year contract
School for the Deaf	\$946	Payment for one summer contract outside of the academic year contract

## STATE AGENCY APPLICATIONS FOR FEDERAL GRANTS

Ms. Sharp presented information ([Appendix C](#)) on state agencies that have applied for federal grants estimated to be \$25,000 or more pursuant to Section 54-27-27. She said this section requires 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 June 2012 through September 20, 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	2012/2013 through 2016/2017	\$12,000,000	Teacher Incentive Fund 2012 Competition
Housing Finance Authority	7/1/2012 through 6/30/2013	\$2,000,000	Section B11 Supportive Housing for Persons With Disabilities Project Rental Assistance Demonstration Program
Department of Agriculture	1 year to 2 years	\$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 D](#)) 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.
- Expenditures 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 expenditures 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.

## EMPLOYEE BONUSES

Ms. Sharp presented information on the number of state employees receiving salary bonuses above the 25 percent limitation pursuant to Section 54-06-30. She said agencies may not give bonuses to more than 25 percent of their employees, except in special circumstances approved by Human Resource Management Services. She said Human Resource Management Services is required to report any exceptions to the Budget Section. She said no agencies made requests or exceeded the 25 percent limitation as of July 1, 2012.

## AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION

Vice Chairman Pollert 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 ([Appendix E](#)) relating to the requests was provided to Budget Section members prior to the meeting.

**It was moved by Senator Wardner, seconded by Representative Kreidt, and carried on a roll call vote that pursuant to Chapter 54-16 the Budget Section approve the following requests, which have been approved by the Emergency Commission:**

- **Tax Commissioner (Request #1801) - Request to increase federal funds spending authority by \$115,000 from the motor fuel tax enforcement program for the operating expenses line item (\$65,000) and the capital assets line item (\$50,000) for enhanced motor fuel tax enforcement activities.**

- **Parks and Recreation Department (Request #1803) - Request to increase special funds spending authority by \$150,000 to use state park revenue for the natural resources line item to provide a house at the Lewis and Clark State Park for a recently transferred park ranger.**
- **Adjutant General (Request #1804) - Request for a line item transfer of \$250,000 from the grants line item to the radio communications line item to allow federal funding from the emergency management performance grant program to be spent by State Radio to enhance radio coverage of the State Radio tower system.**
- **Secretary of State (Request #1806) - Request to increase the salaries and wages line item by \$196,000 from the Secretary of State's general services fund to pay overtime and temporary employees.**
- **State Department of Health (Request #1807) - Request for funding of \$280,314 from the state contingencies appropriation to increase the salaries and wages line item (\$145,449) and the operating expenses line item (\$134,865) and to add three FTE positions in the Environmental Health Section of the State Department of Health to provide inspection, outreach, investigation, and other services relating to water quality, wastewater disposal and treatment, and oil spill response and remediation in western North Dakota.**

Senators Bowman, Christmann, Erbele, Kilzer, O'Connell, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Delzer, Dosch, Glasheim, Hawken, Kelsh, Kempenich, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigesaa, Wieland, and Williams voted "aye." No negative votes were cast.

#### **University of North Dakota - Joint Information Technology Project**

Mr. Randall Thursby, Chief Information Officer, North Dakota University System, Fargo, presented information ([Appendix F](#)) to the Budget Section of funding expended for the North Dakota University System and University of North Dakota joint information technology building project pursuant to Section 7 of 2011 House Bill No. 1003. He said the total estimated project cost is now \$16.8 million, a decrease from the original appropriation of \$25.5 million consisting of \$12.5 million from the general fund, up to \$5 million from one-time efficiency savings, and a federal grant of \$8 million. He said the federal grant of \$8 million was not available, and in March 2012 the Budget Section approved a reduction in project scope to include renovation of an existing facility for the data center and construction of a new office facility for the majority of the staff. He said the

revised project plan costs less than the original plan and provides for a Tier III rather than a Tier II information technology facility which meets the secure data center requirements for administrative, academic, and research standards. He said work on the facilities is underway, and the project is estimated to be completed by July 31, 2013.

#### **North Dakota State University - Minard Hall**

Mr. Michael Ellingson, Facility Management Director, North Dakota State University, Fargo, presented information ([Appendix G](#)) on the status of the Minard Hall project pursuant to Section 8 of 2011 House Bill No. 1003. He said the Minard Hall project is estimated to be complete by spring 2013 and that project costs are within the budget of \$22.87 million. He said \$4.87 million relates to the building collapse and \$18 million for Phases I, II, and III of the project. He said project expenditures as of August 31, 2012, total \$15,895,430.

Mr. Christopher Wilson, Attorney, Anderson, Bottrell, Sanden & Thompson Law Firm, Fargo, said the law firm is actively seeking to recover damages, expenses, and costs resulting from the collapse of Minard Hall. He said two civil lawsuits have commenced--both venued in the district court in Fargo. He said in the first litigation, North Dakota State University (NDSU) brought suit against the State fire and tornado fund requesting a judgment that the fund's insurance policy cover damages sustained as a result of the collapse. He said in the second, the state, through NDSU and the State Board of Higher Education, filed suit against JLG (architectural firm), Heyer Engineering (structural engineering firm), and NTI (geotechnical engineering firm) to recover damages sustained as a result of the collapse of Minard Hall and as a result of the redesign of the north addition to Minard Hall. Mr. Wilson said both lawsuits are in written discovery phase estimated to be completed within two months, and then depositions will begin. He said he does not expect any trials to occur for at least one year.

In response to a question from Representative Skarphol, Mr. Ellingson said a cost-benefit analysis of remodeling compared to new construction was completed for the Minard Hall project as part of the project evaluation. He said he believes Minard Hall was on the National Historic Register, and therefore, demolition of the building for new construction purposes was not an option.

#### **REPORT ON FEDERAL FUNDS**

The Legislative Council staff presented a memorandum entitled [Analysis of Federal Funds for Bienniums Ending June 30, 2013, and June 30, 2015, Excluding Federal Fiscal Stimulus Funds - American Recovery and Reinvestment Act of 2009](#) which provides information regarding federal funds estimated to be received by state agencies during the 2011-13 and 2013-15 bienniums. Excluding federal fiscal stimulus funds, agencies estimate \$3.69 billion



of federal funds will be received during the 2011-13 biennium, \$449.3 million more than appropriated. Agencies estimate \$2.85 billion of federal funds will be received for the 2013-15 biennium, \$832.6 million less than is estimated to be received during the 2011-13 biennium.

The Legislative Council staff presented a memorandum entitled [Analysis of American Recovery and Reinvestment Act of 2009 Funds for Bienniums Ending June 30, 2013, and June 30, 2015](#). Agencies estimate \$88.1 million of federal fiscal stimulus funds from the American Recovery and Reinvestment Act (ARRA) will be received during the 2011-13 biennium, \$6.8 million more than appropriated. Agencies reported a total of 19.7 ARRA-related FTE positions. Agencies estimate \$10.6 million of ARRA funds will continue into the 2013-15 biennium.

The Legislative Council staff presented a memorandum entitled [Largest Variances by Agency - 2011-13 Biennium - Federal Funds Appropriated and Federal Funds Estimated to Be Received Excluding Federal Fiscal Stimulus Funds - American Recovery and Reinvestment Act of 2009 \(ARRA\)](#). The memorandum provides information regarding the major variances experienced by agencies during the 2011-13 biennium relating to federal funds appropriated and federal funds estimated to be received and ARRA funds appropriated and ARRA funds estimated to be received by the agencies with major variances, as well as in federal funds estimated to be received for the 2013-15 biennium compared to the 2011-13 biennium.

The Legislative Council staff presented a memorandum entitled [Programs Identified That May Be Affected by Federal Budget Control Act Sequestration Process](#) which provides information reported by agencies on any programs that may be affected by federal funding reductions due to sequestration beginning in January 2013 as a result of provisions of the Budget Control Act of 2011. Sequestration is the process of cordoning off money that may have been authorized by Congress but is now prohibited from being spent. Sequestration will begin unless Congress reaches a deficit reduction deal or Congress and the Administration change the law. Sequestration will result in automatic reductions to federal programs not specifically excluded as of January 1, 2013.

## LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

The Legislative Council staff distributed a memorandum entitled [Federal Block Grants - 2013 Legislative Hearings](#) which provides information regarding block grant hearings required during the 2013 legislative session. The Legislative Council staff distributed a resolution draft [\[13.3016.01000\]](#) authorizing the Budget Section to hold any legislative block grant hearings required during the 2013-15 biennium. The Legislative Council staff contacted

state agencies receiving federal funds to determine which agencies receive block grants that require legislative hearings. The survey revealed only one block grant with that requirement--the community services block grant administered by the Department of Commerce Division of Community Services. A summary of the proposed use and distribution plan for the block grant will be provided by the Department of Commerce as part of the agency's appropriations hearing during the 2013 legislative session. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2013 legislative session.

**It was moved by Representative Delzer, seconded by Representative Vigesaa, and carried on a roll call vote that the resolution draft providing Budget Section authority to hold public legislative hearings required for receipt of federal block grant funds during the period from the recess or adjournment of the 63<sup>rd</sup> Legislative Assembly through September 30, 2015, be approved and recommended to the Legislative Management.** Senators Bowman, Christmann, Erbele, Kilzer, O'Connell, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Delzer, Dosch, Glassheim, Hawken, Kelsh, Kempenich, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Skarphol, Thoreson, Vigesaa, Wieland, and Williams voted "aye." No negative votes were cast.

## 2012 NORTH DAKOTA FINANCE FACTS

At the request of Vice Chairman Pollert, the Legislative Budget Analyst and Auditor presented the Legislative Council report entitled [2012 North Dakota Finance Facts](#)--a pocket brochure prepared pursuant to 2009 House Concurrent Resolution No. 3036. The publication includes information regarding economic statistics, the state budget, kindergarten through grade 12 education, higher education, human services, corrections, economic development, and transportation. The brochure is updated and published annually.

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

## ADJUTANT GENERAL REPORTS

Vice Chairman Pollert called on Mr. Greg Wilz, Director, Homeland Security Division, Department of Emergency Services, and State Security Advisor, Adjutant General, to provide an update ([Appendix H](#)) on 2011 flood disasters and related expenditures. Mr. Wilz said 2011 flood disaster obligated costs relating to public response, recovery, and mitigation total \$611.9 million as of August 2012. He presented the following projections relating to estimated public response, recovery, and mitigation flood costs:

	Current Obligations (Amounts Shown in Millions)	Expenditures as of August 2012 (Amounts Shown in Millions)	State Share Description
State indirect	\$24.0	\$24.0	Mission assignments require 7 percent state match and 3 percent local share.
Public assistance	271.6	244.5	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	241.3	213.7	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	75.0		12-month lock-in - 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	\$611.9	\$482.2	

Mr. Wilz said the June 30, 2013, balance in the state disaster relief fund is estimated to be \$16.9 million. He said this estimated balance includes expenditures for known disasters. He said 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 July 2012	Projected Biennial Expenditures	Emergency Commission and Budget Section Approvals	Pursuant to 2011 Senate Bills
State match for disasters prior to 2009	\$784,025	\$859,851	\$1,091,013	Section 1 of SB 2016
2009 flood	1,541,844	6,711,199 <sup>1</sup>	4,820,828	Section 1 of SB 2016
January 2010 winter storm	12	507,540	565,527	Section 15 of SB 2371
2010 flood	39,164	2,263,526 <sup>1</sup>	1,885,457	Section 15 of SB 2371
April 2010 ice storm		1,185,531 <sup>1</sup>	1,142,381	Section 15 of SB 2371
2011 flood	5,820,553	16,425,105	29,205,205	Section 5 of SB 2016 (\$3.5 million) Section 4 of SB 2369 (\$14 million) Section 15 of SB 2371 (\$11,705,205)
Disaster response coordination	126,000	400,000	400,000	Section 4 of SB 2016
Flood mitigation in incorporated cities	679,560	3,200,000	3,200,000	Section 4 of SB 2369
Road grade raising projects	7,240	4,800,000	4,800,000	Section 4 of SB 2369
Flood-impacted housing rehabilitation	2,268,650	10,000,000	10,000,000	Section 9 of SB 2371
Contingent 2012 disaster exceeding \$50 million		5,000,000		Section 16 of SB 2371
Total	\$11,267,048	\$51,352,752	\$57,110,411	

<sup>1</sup>If 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 Section 37-17.1-27.

In response to a question from Representative Delzer, the Legislative Budget Analyst and Auditor said state disaster relief fund appropriations for the 2011-13 biennium will expire if the funding is not distributed by the end of the biennium.

In response to a question from Representative Nelson, Mr. Wilz said a series of events precluded road grade raising projects from starting when scheduled. He said the final 2 percent of funding available for road grade raising projects is typically held until the Department of Emergency Services is notified the project is complete and an audit is conducted certifying the project.

Representative Carlson, Representative Brandenburg, and Representative Skarphol expressed concern regarding delays in Federal Emergency Management Agency (FEMA) disaster relief funding being provided to approved applicants.

Representative Skarphol asked the Legislative Council staff to coordinate the compilation of information available from the Department of Emergency Services and political subdivisions on disaster relief funding awards compared to actual collections from FEMA.

### UPPER GREAT PLAINS TRANSPORTATION INSTITUTE - TRANSPORTATION INFRASTRUCTURE STUDY

Dr. Denver Tolliver, Associate Director, Upper Great Plains Transportation Institute, presented the final report ([Appendix I](#)) on transportation infrastructure needs pursuant to Section 1 of 2011 Senate Bill No. 2325. Mr. Tim Horner, Program Director TLN and Interim Program Director DOTSC, Upper Great Plains Transportation Institute, and

Mr. Alan Dybing, Associate Research Fellow, Upper Great Plains Transportation Institute, were also available to answer questions. Dr. Tolliver said the study considers the combined effects of all economic activities on county and local roads throughout the state, including effects from agricultural, manufacturing, and oil-related developments. He said for the 2013-15 biennium, the study identified \$521 million of road infrastructure needs in oil and gas-producing counties and an overall total of \$834 million of road infrastructure needs in all counties of the state. He said the 2013-15 biennium identified road infrastructure needs include \$471 million for unpaved roads and \$363 million for paved roads. He said the study is based on the most current production forecasts, traffic estimates, and roadway condition data available.

In response to a question from Representative Pollert, Dr. Tolliver said the estimated costs represent total funds necessary, including any potential federal funding available in the 2013-15 biennium.

In response to a question from Representative Kelsh, Dr. Tolliver said bridge repair was not analyzed in the study; however, the institute could conduct such a study if so desired.

Representative Skarphol asked that Dr. Tolliver provide the Budget Section data identifying road infrastructure needs by county and township and provide maps prioritizing roads with the highest repair needs. Representative Skarphol asked that this analysis include results of what varying funding levels ranging from \$20 million to \$834 million could achieve separating results for township and county, as well as paved or unpaved roads.

### **COMMISSION ON LEGAL COUNSEL FOR INDIGENTS IMPACT OF INCREASED OIL ACTIVITY**

Vice Chairman Pollert called on Ms. Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents to present information ([Appendix J](#)) on the impact of increased oil activity on the agency's budget. Ms. Huseby said the commission anticipates it may exceed its 2011-13 biennium budget by \$200,000 or more due to rising caseloads in the northwest and southwest judicial districts of the state. She said the agency plans to utilize funding available from its special fund that it may spend pursuant to the agency's continuing appropriation to continue providing services for the remainder of the 2011-13 biennium. She said special funds consist of collections of defendant fees and court administration and indigent application fees projected to total \$2.3 million by the end of the 2011-13 biennium, of which the Legislative Assembly in 2011 appropriated \$1.9 million.

In response to a question from Representative Pollert, Ms. Huseby said the budget for the 2013-15 biennium includes a request for additional funding to

address the increased costs the commission is experiencing.

### **STATE TREASURER - OUTSTANDING WARRANTS AND CHECKS**

Ms. Kelly Schmidt, State Treasurer, presented information ([Appendix K](#)) on warrants and checks outstanding for more than 90 days and less than three years pursuant to Section 54-11-01. She said this section enacted by the Legislative Assembly in 2011 requires the State Treasurer to report to the Budget Section, within 90 days of the beginning of each fiscal year, all warrants and checks outstanding for more than 90 days and less than three years. She said items reported may be the result of money which has not been received by the proper recipient or checks that have not been cashed. Annually, she said, checks more than three years old are transferred to the Department of Trust Lands as unclaimed property. She said a total of \$3.9 million in outstanding checks exists for fiscal years 2010, 2011, and 2012. She provided a listing of 2,681 outstanding checks to be sent to the Unclaimed Property Division of the Department of Trust Lands in October 2012 which total \$260,636.

### **INFORMATION TECHNOLOGY DEPARTMENT ANNUAL REPORT**

Mr. Mike Ressler, Deputy Chief Information Officer, Information Technology Department, presented information ([Appendix L](#)) regarding a summary of the department's annual report pursuant to Section 54-59-19. He said the department began as Central Data Processing in 1969. He said the department billings for fiscal year 2012 totaled \$52.9 million. He said the majority of revenue is generated from computer hosting (29 percent), software development (24 percent), and direct billing (24 percent) service fees. He said the rates charged for fees and services by the department compare favorably to those charged by surrounding states. He said through the annual customer survey, customers of the department reported the following:

- 92.2 percent agree that the department's services met their business needs.
- 92.3 percent viewed the department as a trusted business partner.
- 83.9 percent responded that the department is their preferred information technology provider.

### **STATE WATER COMMISSION - RESOURCES TRUST FUND**

Mr. Dave Laschkewitsch, Administrative Services Director, State Water Commission, presented a summary ([Appendix M](#)) of 2011-13 biennium to date activity of the resources trust fund, including a summary of Budget Section approvals 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 as of August 2012, oil extraction tax deposits into the resources trust fund total \$174,228,473. He said revised 2011-13 revenue estimates reflecting actual oil extraction tax collections through August 2012 and revised revenue projections for the remainder of the 2011-13 biennium provides an ending balance in the resources trust fund of \$157.1 million. He said the Budget Section has approved expenditures from the resources trust fund as follows:

SB 2371 appropriation from the resources trust fund		\$50,000,000
<b>Approved by Budget Section</b>		
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	
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

**RISK MANAGEMENT WORKERS' COMPENSATION PROGRAM**

Mr. Tag Anderson, Director, Risk Management Division, Office of Management and Budget, presented information ([Appendix N](#)) regarding the status of the risk management workers' compensation program pursuant to Section 65-04-03.1(5). He said the Legislative Assembly in 2001 established a single workers' compensation account for all state entities. He said the Risk Management Division administers the program. He said for coverage periods beginning July 1, 2001, the Risk Management Division entered deductible contracts with Workforce Safety and Insurance for 143 consolidated accounts. He said the deductible amount selected was \$100,000 per claim. He provided the following results for the 11 coverage years beginning July 1, 2001, through June 30, 2012:

Nonconsolidated guaranteed cost program premium and assessments		\$54,193,451
Risk Management Division deductible premium paid to Workforce Safety and Insurance	\$19,972,465	
Risk Management Division paid losses through June 30, 2011	17,414,312	
Risk Management Division pending losses (reserves)	2,364,414	
Risk Management Division combined deductible premium and losses		\$39,751,191
Estimated savings for a 10-year period		\$14,442,260

**DEPARTMENT OF CORRECTIONS AND REHABILITATION - PRISON EXPANSION PROJECT**

Mr. Dave Krabbenhoft, Administrative Director, Department of Corrections and Rehabilitation, presented a report ([Appendix O](#)) 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 on budget and has an expected March 2013 date of completion. He said the completion date was adjusted from December 2012 due to contractors being unable to attract and retain qualified personnel. 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 August 2012, project expenditures have totaled \$47 million.

In response to a question from Representative Delzer, Mr. Krabbenhoft said legislative intent provides that staff for the facility may be hired within 90 days of substantial completion. He said he anticipates filling 50 FTE positions in December 2012.

**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 P](#)) 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 of which is 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 September 2012, \$513,000 has been spent, and based on the current status of legal activities associated with the EPA, the department has requested the \$500,000 line of credit. He said 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. On July 20, 2012, the Washington, D.C., District Court found the EPA proposed modeling not ready for application. The EPA subsequently retracted its position requiring modeling to determine attainment status. The court's finding allows states to challenge any final action EPA takes in the future to impose obligations on states.
- 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 has notified the EPA that it is challenging the federal implementation plan. Legal briefs are due to the federal court by October 1, 2012.
- 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 Kreidt, Mr. Glatt said the department is requesting \$500,000 from the general fund for the 2013-15 biennium to continue addressing EPA issues.

### **INDUSTRIAL COMMISSION - ENVIRONMENTAL PROTECTION AGENCY LITIGATION AND OTHER ADMINISTRATIVE PROCEEDINGS**

The Legislative Budget Analyst and Auditor announced that the Legislative Council staff distributed to each member a written summary report ([Appendix Q](#)) from Mr. Lynn Helms, Director, Department of Mineral Resources, Industrial Commission, pursuant to Section 28 of 2011 Senate Bill No. 2371 on EPA litigation and other administrative proceedings. The Legislative Budget Analyst and Auditor 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 report indicates the EPA issued draft guidance for permitting hydraulic fracturing using diesel fuel in May 2012, and comments regarding the guidance were provided by the Industrial Commission in July 2012.

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

Vice Chairman Pollert called on Ms. Melissa Hauer, General Counsel, Insurance Department, to present information ([Appendix R](#)) 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. Hauer said the Insurance Department continues to work with the United States Department of Health and Human Services (HHS) to comply with components of PPACA. She said the Insurance Department has joined the National Association of Insurance Commissioners newly created Health Care Reform Regulatory Alternatives Working Group, which is a forum for states to discuss health insurance exchange options.

Ms. Hauer said the initial deadline implemented by HHS which required a health insurance mandate decision regarding selection of a benchmark plan providing a comprehensive package of coverage based on categories determined by HHS has been changed from October 1, 2012, to a date not yet identified. She said the Insurance Department hired an actuarial consulting firm to analyze the benchmark options provided by the state employee benefit plan, the federal employee plans, the commercial HMO plans, and the small group plans. She said this

information was presented to the Health Care Reform Review Committee in September 2012.

Ms. Hauer said the Insurance Department was awarded and the 2011 Legislative Assembly approved a federal grant of \$1 million for health insurance rate review enhancement and \$1 million for planning a health insurance exchange. She said of the \$1 million of federal funds awarded for planning a health insurance exchange, \$768,022 was transferred to the Department of Human Services for work on the Medicaid eligibility system upgrade. She said an extension has been requested for \$857,374 of the \$1 million of federal funds awarded for health insurance rate review enhancement for costs of contracted actuaries in the future.

**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 S](#)) regarding the Medicaid management information system (MMIS) project. She said the MMIS project budget is \$81.9 million, and expenditures through August 2012 total \$47.2 million as presented on the following schedule:

Description	Budget	Spent Through August 2012	Remaining
General fund	\$7,533,297	\$3,466,386	\$4,066,911
Federal funds	72,191,913	41,556,709	30,635,204
Other funds	2,193,526	2,193,526	0
<b>Total</b>	<b>\$81,918,736</b>	<b>\$47,216,621</b>	<b>\$34,702,115</b>

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

Component	Budget	Costs Through April 2012
MMIS	\$53,728,257	\$27,045,111
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	5,252,000	3,175,000
Longitudinal financial analysis reporting		
Clinical outcome and disease management analysis		
Ad hoc reporting		

Component	Budget	Costs Through April 2012
Independent verification and validation services	6,915,521	5,492,634
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	11,816,392	9,821,291
Project management services		
Software development		
Systems administration		
Other	4,206,566	1,682,585
Subject matter experts		
Facilities		
<b>Total</b>	<b>\$81,918,736</b>	<b>\$47,216,621</b>

Ms. Witham said that as of September 18, 2012, 40,022 Medicaid claims were in suspense compared to the previous claims in suspense as follows:

As of	Claims in Suspense	Increase (Decrease) to Prior Report
September 18, 2012	40,022	8,257
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 Representative Kreidt, Ms. Witham said 90 percent of claims in suspense are paid within 30 days.

In response to a question from Representative Skarphol, Ms. Witham said there are consequences to the vendor if a "go live" date is missed. She said a daily damage penalty can be imposed for any major milestone that is late. She said it is the intent of the state to use all remedies at its disposal if a deadline is missed.

In response to a question from Representative Pollert, Ms. Witham said New Hampshire is also implementing the Xerox system for its Medicaid system. She said user acceptance testing in New Hampshire scheduled for July 2012 has been delayed until September 2012. She said the base system for New Hampshire and North Dakota is the same but North Dakota system-specific changes represent 5 percent of the remaining work Xerox must complete.

**Appropriation Transfers**

Mr. Paul Kramer, Assistant Director, and Budget Fiscal Administration, Department of Human Services, presented information ([Appendix T](#)) regarding transfers between line items and between subdivisions in excess of \$50,000 pursuant to Section 3 of 2011 Senate Bill No. 2012. As of August 2012, he said, the department has made the following transfers between line items or subdivisions in excess of \$50,000:

Transfer	General Fund	Total Funds	Explanation
Staff realignments	\$2,046,793	\$5,563,040	A total of 38 FTE positions and associated costs were transferred from other divisions into the Information Technology Services Division to better match costs to functions performed.
Estate collection realignment	\$269,126	\$476,417	One FTE position was transferred from the Northeast to the Southeast Human Service Center for a statewide medical director position for the eight human service centers.
Federal reporting position realignment	\$37,706	\$157,109	One FTE position and associated costs were transferred into Fiscal Administration due to increased federal reporting demands and requirements related to the Medicaid program.
Aging Services software purchase		\$55,166	Federal funding was transferred from Aging Services to Information Technology Services for software to monitor required statistical information.
Vocational rehabilitation funding transfer	\$24,090	\$113,098	Funding was transferred between the Northwest and North Central Human Service Centers to align funding with needed resources.

**ANNUAL AUDITS OF RENAISSANCE FUND ORGANIZATIONS**

Ms. Andrea Holl Pfennig, Program Administrator of the Renaissance Zone Program, Division of Community Services, Department of Commerce, presented information ([Appendix U](#)) regarding annual audits of renaissance fund organizations pursuant to Section 40-63-07(9). She said there are 55 renaissance zone cities, of which nine have renaissance fund organizations. She said seven of the nine renaissance fund organizations have submitted independent auditor's reports to the Department of Commerce with no findings, and the remaining two renaissance fund organizations are in the process of submitting reports. She provided the following tax credit summary:

	Total Credits Authorized	Total Credits Claimed	Total Credits Available	
			Committed	Uncommitted
Category 1 - (0-5,000 population)	\$439,766	\$439,766 <sup>1</sup>		
Category 2 - (5,001-30,000 population)	682,500	250,000 <sup>2</sup>		\$432,500
Category 3 - (Over 30,000 population)	7,377,734	4,835,000 <sup>3</sup>	\$1,763,750	778,984
Total	\$8,500,000	\$5,524,766	\$1,763,750 <sup>4</sup>	\$1,211,484 <sup>4</sup>

<sup>1</sup>Category 1 cities - Casselton (\$37,500), Hazen (\$15,500), Mayville (\$99,050), Hope (\$287,716).  
<sup>2</sup>Category 2 cities - Jamestown (\$150,000), West Fargo (\$100,000).  
<sup>3</sup>Category 3 cities - Fargo (\$4,835,000).  
<sup>4</sup>Of the \$2,975,234 credits available, \$563,750 is reserved for Fargo and \$1.2 million for Grand Forks. If not claimed in a timely manner, the reserved credits can be used by other renaissance fund organization cities.

**DEPARTMENT OF COMMERCE - HIGHER EDUCATION ELECTRONIC PORTFOLIO SYSTEM PILOT PROGRAM**

Ms. Beth Zander, Director, Division of Workforce Development, Department of Commerce, provided information ([Appendix V](#)) on the higher education electronic portfolio system pilot program pursuant to Section 54-60-27. She said this section requires that the Division of Workforce Development report to the Budget Section on the use of the \$150,000 of one-time funding provided for the higher education electronic portfolio system pilot program. She said as of August 2012, the project has incurred expenditures of approximately \$65,000, and \$140,000 of the \$150,000 total funding has been committed. She said an eFolio Pilot Project Committee was organized, including representation from North Dakota State College of Science, Valley City State University, Job Service North Dakota, the University System, and the Department of Commerce. She said the project committee selected MyeFolio.com for the pilot program--a product available from Avenet Web Solutions LLC, to enable users to create portfolios highlighting their education and skills and to enable employers and economic developers to conduct online searches to determine workforce potential by geographic region, skill, education, and experience. She said MyeFolio.com, however, was not capable of the desired search function and would require further customization to enable a statewide search function. She said students at Valley City State University, North Dakota State College of Science, NDSU, the University of Mary, and nonstudent job seekers utilized the portfolio system.

**LEGACY AND BUDGET STABILIZATION FUND ADVISORY BOARD - STATUS REPORT**

Senator Christmann, Chairman, Legacy and Budget Stabilization Fund Advisory Board, presented

a status report ([Appendix W](#)) regarding the development of investment policies for the legacy fund and budget stabilization fund pursuant to Section 21-10-11. He said the section requires the advisory board to provide at least semiannual reports to the Budget Section regarding asset allocation and investment policies developed for the legacy fund and budget stabilization fund as well as recommendations presented to the State Investment Board regarding investment of funds in the legacy fund and budget stabilization fund.

Senator Christmann said the advisory board continues to evaluate the budget stabilization fund investment policy statement. He said the advisory board approved an investment policy statement for the legacy fund in December 2011. He said the advisory board developed the investment policy statement to focus on the goal provided for in 2011 Senate Bill No. 2302 as approved by the Legislative Assembly--to preserve principal while maximizing total return. He said the investment policy statement asset class mix currently provides that 100 percent of legacy fund assets be held in bonds or fixed income, and that the advisory board would consider plans for including stocks and equities as a part of the asset class mix in the future.

Senator Christmann said in August 2012 the advisory board recommended that the State Investment Board arrange to contract with an investment consultant to conduct a study on the appropriate asset class mix for the legacy fund. He said the advisory board will have a joint meeting with the State Investment Board on Friday, September 28, 2012, to hear presentations by investment consultant candidates of proposals to conduct a study on the appropriate asset class mix. He said the Attorney General has issued an opinion letter that states investment consultant costs are associated with the management of the legacy fund and are an appropriate expense to be paid from the fund.

Senator Christmann requested input from other legislators regarding revisions to the budget stabilization fund investment policy statement and development of an appropriate asset class mix for the legacy fund.

### **TOBACCO PREVENTION AND CONTROL EXECUTIVE COMMITTEE**

Vice Chairman Pollert announced that the Legislative Council staff distributed to each member a written summary report ([Appendix X](#)) 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.

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

Vice Chairman Pollert announced the next meeting of the Budget Section will be Wednesday, December 5, 2012.

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

Vice Chairman Pollert adjourned the meeting at 3:20 p.m.

---

Sara E. Pahlke  
Fiscal Analyst

---

Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH: 24