

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### BUDGET SECTION

Tuesday, December 13, 2011  
Senate Chamber, State Capitol  
Bismarck, North Dakota

Senator Tony Grindberg, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Tony Grindberg, Bill Bowman, Randel Christmann, Robert Erbele, Ray Holmberg, Ralph L. Kilzer, 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, Jerry Kelsh, Keith Kempenich, Matthew M. Klein, Gary Kreidt, Joe Kroeber, Bob Martinson, Ralph Metcalf, David Monson, Jon Nelson, Chet Pollert, Blair Thoreson, Don Vigesaa, Alon Wieland, Clark Williams

**Members absent:** Representatives Eliot Glasheim, Kathy Hawken, Lee Kaldor, Bob Skarphol

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

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

**It was moved by Senator Robinson, seconded by Senator Holmberg, and carried on a voice vote that the minutes of the September 15, 2011, meeting be approved as distributed.**

### **62<sup>ND</sup> LEGISLATIVE ASSEMBLY STATE BUDGET ACTIONS SUPPLEMENT FOR THE 2011-13 BIENNIUM**

At the request of Chairman Grindberg, the legislative budget analyst and auditor presented the [62<sup>nd</sup> Legislative Assembly State Budget Actions Supplement for the 2011-13 Biennium](#) report. He said the publication includes information regarding legislative actions from the November 2011 special session. He said the executive summary tab provides an updated budget summary for the 2011-13 biennium, including an appropriations summary listing bills approved during the special session by agency and bill number.

### **STATUS OF THE 2011-13 BIENNIUM 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:

Unobligated general fund balance - July 1, 2011		\$996,832,711
Add		
General fund collections through October 2011	\$981,851,236	
Forecasted general fund revenue for the remainder of the 2011-13 biennium	2,640,703,279	
Total estimated general fund revenue for the 2011-13 biennium		3,622,554,515
Balance obligated for authorized carryover from the 2009-11 biennium		106,945,443
Estimated total available		4,726,332,669
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 session appropriations	(169,832,668)	
Balance obligated for authorized carryover from the 2009-11 biennium	(106,945,443)	
2011-13 emergency appropriations utilized in 2009-11	519,254	
Estimated deficiency requests	0	
Total appropriations and estimated deficiency requests		(4,343,112,649)
Estimated general fund balance - June 30, 2013		\$383,220,020 <sup>1</sup>

<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 a cap of 9.5 percent of general fund appropriations.

Ms. Sharp presented information on general fund revenue collections for October 2011 and the 2011-13 biennium to date. She said general fund revenues collected biennium to date are \$177.9 million or 22.1 percent more than the April 2011 legislative forecast. She said sales tax collections have exceeded estimates by \$97.1 million, or 41.2 percent, and individual income tax collections have exceeded estimates by \$30 million, or 34.3 percent.

### **ECONOMIC INDICATORS**

Ms. Sharp presented statistics on the oil industry. She provided average monthly oil statistics from November 2010 to October 2011, including a history of price per barrel, production, and drilling activity.

She said the current posted price of oil is \$98.34 per barrel, production in October 2011 was just over 488,000 barrels per day, and the current rig count is 200 rigs. She said the rig count has increased by 42 rigs compared to the number operating in November 2010. 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.

Ms. Sharp said it is not possible at this time to quantify the estimated effect on 2011-13 revenues from 2011 flooding impacts on agricultural production and fall 2011 harvest complications.

### **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 of August through October 2011, there were no state agencies with fiscal irregularities.

### **STATE AGENCY APPLICATIONS FOR FEDERAL GRANTS**

Ms. Sharp presented information 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 of August 2011 through October 2011, the following agency applied for a federal grant estimated to be \$25,000 or more:

<b>Agency</b>	<b>Time Period of Grant</b>	<b>Amount</b>	<b>Title of Grant</b>
Attorney General's office	August 2011 through July 2013	\$500,000	Child Sexual Predator Program - United States Department of Justice

### **STATE BOARD OF HIGHER EDUCATION - MONTHLY PROJECT VARIANCE REPORTS**

Ms. Tammy Dolan, Management and Fiscal Analyst, Office of Management and Budget, presented monthly project variance reports ([Appendix C](#)) 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

State Board of Higher Education 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. Dolan said the change order details were not included in the report provided to the Budget Section but are available through OMB upon request.

### **RECOMMENDATIONS FOR REVOLVING FUND PREPAYMENT OF PLANNING FEES REQUESTS**

Ms. Sharp presented OMB recommendations ([Appendix D](#)) regarding requests from Bismarck State College and Valley City State University to utilize funding from the revolving fund for prepayment of consulting and planning fees for capital improvements pursuant to Section 54-27-22. She said pursuant to this section, the Budget Section may approve the use of funds from the preliminary planning revolving fund for studies, planning, architectural programming, schematic designs, and cost estimates relating to proposed new capital improvements and major remodeling of existing facilities. She said that if funds are approved, the agency receiving the funds must repay the preliminary planning revolving fund as money becomes available through legislative appropriation or other sources for the commencement of the project.

Ms. Sharp said the Valley City State University request has been withdrawn. She said the Bismarck State College request relates to evaluating deterioration of the existing library and the construction of a new facility for the visual and performing arts and potentially a replacement library. She said OMB recommended \$13,000 be available from the preliminary planning revolving fund to study the library and determine if it can be renovated rather than demolished, and that upon nearing completion of the library study, a final site may be selected for the Center for Creativity and Communication and \$95,000 be made available from the preliminary planning revolving fund for preplanning of the center.

It was moved by Representative Drovdal, seconded by Senator Holmberg, and carried on a roll call vote that the Budget Section approve the Bismarck State College request to utilize \$108,000 from the revolving fund for prepayment of planning fees for capital improvements relating to the Library and Center for Creativity and Communication pursuant to Section 54-27-22. Senators Grindberg, Bowman, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wardner, and Warner and Representatives Dahl, Dosch, Kelsh, Kroeber, Martinson, Metcalf, Monson, Nelson, and Williams voted "aye." Senators Christmann and Wanzek and Representatives Bellew, Brandenburg, Carlson, Delzer, Drovdal, Kempenich, Klein, Kreidt, Pollert, Thoreson, Vigasaa, and Wieland voted "nay."

### 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. The information relating to the requests was provided to Budget Section members prior to the meeting.

It was moved by Senator Holmberg, seconded by Senator Robinson, 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:

- Attorney General (Request #1779) - Request to increase federal funds spending authority by \$100,000 to accept funds from the United States Department of Justice, Office of Community Oriented Policing Services, Child Sexual Predator Program for the capital assets line item (\$100,000) to establish, train, and equip investigative teams of tribal, federal, and state law enforcement officers to identify and arrest offenders who are not in compliance with sexual offender registration requirements and to educate attorneys in the requisite elements of fact needed to charge an offender.
- Adjutant General (Request #1781) - Request to authorize spending for costs relating to state disasters from the state disaster relief fund of \$57,110,411 in the 2011-13 biennium, of which \$23,500,000 was previously approved by the Budget Section in June 2011 and \$33,610,411 is new spending authority as follows:

Disaster	Requested Amount	Prior Approval <sup>1</sup>	Adjusted Requested Amount	Pursuant to
State match for disasters prior to 2009	\$1,091,013		\$1,091,013	Section 1 of 2011 SB 2016
2009 flood	4,820,828		4,820,828	Section 1 of SB 2016
January 2010 winter storm	565,527		565,527	Section 15 of 2011 SB 2371
2010 flood	1,885,457		1,885,457	Section 15 of SB 2371
April 2010 ice storm	1,142,381		1,142,381	Section 15 of SB 2371
2011 flood	29,205,205	\$17,500,000	11,705,205	Section 5 of SB 2016 (\$3.5 million)
				Section 4 of 2011 SB 2369 (\$14 million)
				Section 15 of SB 2371 (\$11,705,205)
Disaster response coordination	400,000		400,000	Section 4 of SB 2016
Flood mitigation in incorporated cities	3,200,000	1,200,000	2,000,000	Section 4 of SB 2369
Road grade raising projects	4,800,000	4,800,000	0	Section 4 of SB 2369
Flood-impacted housing rehabilitation	10,000,000		10,000,000	Section 9 of SB 2371
<b>Total</b>	<b>\$57,110,411<sup>1</sup></b>	<b>\$23,500,000</b>	<b>\$33,610,411</b>	

<sup>1</sup>Amounts requested include prior approvals by the Emergency Commission and Budget Section for 2011-13 expenses. As of November 2011 Emergency Commission and Budget Section approval for 2011-13 expenses includes \$17.5 million for flood disasters (approved by Emergency Commission May 31, 2011, and Budget Section June 21, 2011), \$1.2 million for funding specific city flood mitigation projects (approved by Emergency Commission June 16, 2011, and Budget Section June 21, 2011), and \$4.8 million for road grade raising and matching grants to political subdivisions (approved by Emergency Commission June 16, 2011, and Budget Section June 21, 2011).

Senators Grindberg, Bowman, Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Carlson, Dahl, Delzer, Dosch, Drovdal, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, 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 University System to present information ([Appendix E](#)) 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.

### **State College of Science - Football Complex Renovation**

Mr. Mike Renk, Vice President for Administrative Affairs, State College of Science, Wahpeton, provided information on a request for approval under Section 15-10-12.3 to utilize \$910,000 from auxiliary service income and \$40,000 from a vendor contribution rather than private funds for a portion of the costs of the football complex renovation project. He said the request is to mitigate the deterioration of the football complex roof resulting from moisture and mold issues which have also caused structural damage to the roof support beams. He said it is important to remediate the moisture and mold issues before further damages to the football complex occur; therefore, the request is to utilize funding from auxiliary service income and a vendor contribution that is immediately available rather than waiting to raise the private funds authorized in 2011 Senate Bill No. 1003. He said if the college can generate additional private funds prior to completion of the project, the funding used from auxiliary reserves will be reduced.

Representative Delzer said he does not support changing the funding source of the football complex renovation project. He said the entire Legislative Assembly should consider this change.

Representative Williams expressed support for the request. He said it is important for the college to proceed as quickly as possible to refurbish the infrastructure of the football complex.

**It was moved by Representative Williams and seconded by Senator Robinson that the Budget Section approve the State College of Science request for approval under Section 15-10-12.3 to utilize \$910,000 from auxiliary service income and \$40,000 from a vendor contribution rather than private funds for a portion of the costs of the football complex renovation project.** Senators Grindberg, Krebsbach, Robinson, Schneider, Taylor, Wardner, and Warner and Representatives Kelsh, Klein, Kroeber, Martinson, Metcalf, and Williams voted "aye." Senators Bowman, Christmann, Erbele, Holmberg, Kilzer, and Wanzek and Representatives Bellew, Brandenburg, Carlson, Delzer, Dosch, Drovdal, Kreidt, Nelson, Pollert, Vigesaa, and Wieland voted "nay." **The motion failed.**

### **University of North Dakota - Education Building Addition and Renovation**

Ms. Alice Brekke, Vice President for Finance and Operations, University of North Dakota, Grand Forks, presented a request to increase the education building addition and renovation project authorization by \$10,000 of donations, from \$11.2 million to \$11.21 million, for close-out and warranty support work related to the project. She said the University of North Dakota (UND) utilized \$11.2 million of American Recovery and Reinvestment Act (ARRA) funds for the education building addition and renovation. She said, if approved, the additional \$10,000 needed for the

close-out and warranty support work will be paid from donations.

**It was moved by Senator Holmberg, seconded by Senator Robinson, and carried on a roll call vote that the Budget Section approve a request to increase the education building addition and renovation project authorization by \$10,000 of donations, from \$11.2 million to \$11.21 million, for close-out and warranty support work related to the project.** Senators Grindberg, Bowman, Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Dahl, Delzer, Dosch, Drovdal, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Thoreson, Vigesaa, Wieland, and Williams voted "aye." No negative votes were cast.

### **Williston State College - Campus Branding Project**

Mr. James Foertsch, Budgets and Grants Manager, Williston State College, Williston, presented information on a request to reduce the scope of the campus branding project authorization from Phases I and II at a cost of \$3 million to only Phase I at a cost of \$1.8 million under Section 48-01.2-25.

In response to a question from Representative Delzer, Mr. Foertsch said plans and potential request for funding for Phase II would be presented to the Legislative Assembly in 2013. He said this request was not made of the Legislative Assembly during the November 2011 special session because the college considered its request for additional operating funds, which were approved by the Legislative Assembly in the special session, a higher priority.

In response to a question from Senator Grindberg, Mr. Foertsch said the funding received during the special session is for addressing employee turnover and employee development as well as for costs relating to automation, asbestos mitigation, and additional security.

In response to a question from Senator Wardner, Mr. Foertsch said Phase I is independent of Phase II.

In response to a question from Representative Delzer, Mr. Foertsch said if the request is not approved, the college would most likely not complete any of the project.

In response to a question from Senator Christmann, the legislative budget analyst and auditor said if the request is not approved, the project could only continue if the scope of Phases I and II could be accomplished within the \$3 million of funding previously approved.

**It was moved by Representative Nelson, seconded by Senator Wardner, and carried on a roll call vote that the Budget Section approve the Williston State College request to reduce the scope of the campus branding project authorization from Phases I and II at a cost of \$3 million to Phase I at a cost of \$1.8 million under Section 48-01.2-25.** Senators Grindberg, Bowman,

Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Drovda, Kelsh, Kempenich, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Vigesaa, Wieland, and Williams voted "aye." Representatives Bellew, Brandenburg, Delzer, and Klein voted "nay."

**North Dakota State University -  
Batcheller Building - Center for  
Biopharmaceutical Research and Production  
Centers of Excellence Program**

Mr. Bruce Bollinger, Vice President for Finance and Administration, North Dakota State University, Fargo, presented a request for Budget Section approval under Section 15-10-12.1 of project authorization of \$1.75 million from the Center for Biopharmaceutical Research and Production centers of excellence program required cash match for the Batcheller Building first floor construction project in the Research and Technology Park. Dr. Satish Chandran, Director, Center for Biopharmaceutical Research and Production, North Dakota State University, Fargo, was also present.

In response to a question from Representative Carlson, Mr. Bollinger said a \$2 million grant from the Greater Fargo Moorhead Economic Development Corporation is contingent upon Budget Section approval of the request.

**It was moved by Representative Carlson, seconded by Senator Schneider, and carried on a roll call vote that the Budget Section approve under Section 15-10-12.1 project authorization of \$1.75 million from the Center for Biopharmaceutical Research and Production centers of excellence program required cash match for the Batcheller Building first floor construction project in the Research and Technology Park.** Senators Grindberg, Bowman, Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Kelsh, Kreidt, Kroeber, Martinson, Metcalf, Nelson, Thoreson, Vigesaa, Wieland, and Williams voted "aye." Representatives Bellew, Brandenburg, Delzer, Drovda, Kempenich, Monson, and Pollert voted "nay."

**North Dakota State University -  
Minard Hall**

Mr. Bollinger presented a request for Budget Section approval to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25 and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds. Mr. Michael Ellingson, Facilities Management Director, North Dakota State University, Fargo, and Mr. Dan Hull,

attorney, Anderson, Bottrell, Sanden & Thompson Law Firm representing North Dakota State University (NDSU) in legal action regarding Minard Hall were also present. Mr. Bollinger said NDSU has pursued a lawsuit against its insurance carrier seeking payment for insured damages estimated at \$4.8 million. He said any settlement amount will be used for the additional costs relating to the project.

In response to a question from Representative Carlson, Mr. Hull said the scope of the project is not increasing. He said the increased project authorization is for the additional costs resulting from damages incurred due to the Minard Hall collapse.

In response to a question from Representative Delzer, Mr. Ellingson said \$4.8 million is the estimate of the additional costs. He said all expenditures related to the Minard Hall collapse are being separately recorded and verified by legal counsel.

In response to a question from Senator Bowman, Mr. Bollinger said if legal settlement proceeds are less than the estimated \$4.8 million of additional costs, NDSU would seek direction from the State Board of Higher Education for options to pay for the costs incurred, including the possible request for a deficiency appropriation from the Legislative Assembly in 2013.

Senator Christmann asked whether NDSU is also seeking cost recovery from the contractor responsible for causing the damages. Mr. Hull said cost recoveries are being sought from all parties involved but is unable to provide details since the case is currently in progress.

**It was moved by Senator Krebsbach, seconded by Senator Taylor, and carried on a roll call vote that the Budget Section approve the NDSU request to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25 and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds.** Senators Grindberg, Erbele, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Drovda, Kelsh, Kempenich, Klein, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Thoreson, Vigesaa, Wieland, and Williams voted "aye." Senators Bowman, Christmann, Kilzer, and Wanzek and Representatives Bellew, Brandenburg, Delzer, and Kreidt voted "nay."

**Mayville State University -  
Science-Library Complex**

Mr. Steven Bensen, Vice President for Business Affairs, Mayville State University, Mayville, presented a request for Budget Section approval under Section 48-01.2-25 to increase the science-library complex project authorization by \$95,000 from \$5,138,328 to \$5,233,328 for additional project improvements that are either complete or partially complete and under Section 15-10-12.3 to use institutional collection reserves (\$50,000), library local funds (\$25,000), and

science grant indirect funds (\$20,000) for the project improvements. He said the increase in project scope will allow for expansion of the West Hall demolition site parking lot doubling capacity (\$30,000), remodel of the Science Building restrooms (\$50,000), and Library entrance modification to accommodate a new security gate (\$15,000).

**It was moved by Senator Robinson, seconded by Senator Schneider, and carried on a roll call vote that the Budget Section approve under Section 48-01.2-25 the Mayville State University request to increase the science-library complex project authorization by \$95,000 from \$5,138,328 to \$5,233,328 for additional project improvements that are either complete or partially complete and under Section 15-10-12.3 to use institutional collection reserves (\$50,000), library local funds (\$25,000), and science grant indirect funds (\$20,000) for the project improvements.** Senators Grindberg, Bowman, Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Bellew, Carlson, Dahl, Delzer, Drosdal, Kelsh, Kempenich, Klein, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Vigesaa, Wieland, and Williams voted "aye." Representatives Brandenburg and Dosch voted "nay."

**Mayville State University -  
Artificial Turf at Jerome Berg Football Field  
and Scott Berry Baseball Field**

Mr. Bensen presented a request for Budget Section approval of installation of artificial turf at Jerome Berg football field and Scott Berry baseball field for \$1,056,000 from private fundraising proceeds (\$652,000) and private grant sponsorship funds (\$404,000). He said the football field and the baseball field hold significant snow accumulation into late spring preventing usage for sport practices and games and the football field requires additional maintenance and sod replacement each spring. He said the turf project will include design, site work, and installation of an artificial turf system at the football field and the baseball field--estimated to be completed prior to September 2013.

In response to a question from Representative Delzer, Mr. Bensen said the university has not formally begun fundraising; however, he said, informal discussions have occurred with corporate sponsors.

**It was moved by Senator Schneider and seconded by Representative Klein that the Budget Section approve under Section 15-10-12.1 the Mayville State University request for project authorization of \$1,056,000 from private fundraising proceeds (\$652,000) and private grant sponsorship funds (\$404,000) for installation of artificial turf at Jerome Berg football field and Scott Berry baseball field.** Senators Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, and Taylor and Representatives Kelsh, Klein, Kroeber, and Williams voted "aye." Senators

Grindberg, Bowman, Christmann, Wanzek, Wardner, and Warner and Representatives Bellew, Brandenburg, Carlson, Dahl, Delzer, Dosch, Drosdal, Kempenich, Kreidt, Martinson, Metcalf, Monson, Nelson, Pollert, Vigesaa, and Wieland voted "nay."  
**The motion failed.**

**STATE WATER COMMISSION -  
GRANTS FROM THE  
RESOURCES TRUST FUND**

Mr. Todd Sando, State Engineer, State Water Commission, presented a request ([Appendix F](#)) 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 \$5.55 million of additional funding available in the resources trust fund to fund the following projects:

- \$3 million for Valley City to acquire property for permanent flood control.
- \$2.5 million for Minot and communities along the Mouse River to prepare preliminary design of the Mouse River enhanced flood protection plan.
- \$50,000 for the Souris River Joint Water Resource District (local sponsor of the Mouse River enhanced flood protection plan) for activities associated with project sponsorship, including federal funding applications, coordination of acquisitions, and project planning.

In response to a question from Representative Delzer, Mr. Sando said some of the funding could be recouped through hazard mitigation grants if the site is within the 100-year floodplain. He said most of Minot is outside the floodplain. He said only 130 homes in Minot currently would qualify for hazard mitigation grants.

In response to a question from Representative Carlson, Mr. Sando said resources trust fund collections are currently 40 percent more than 2011-13 projections due to the beginning balance being \$15 million more than anticipated and revenue collections to date being \$12 million more than anticipated.

**It was moved by Representative Klein, seconded by Representative Metcalf, and carried on a roll call vote that the Budget Section approve the State Water Commission's request pursuant to Senate Bill No. 2371 and Section 4 of Senate Bill No. 2020 to spend \$5.55 million of additional funding available in the resources trust fund for Valley City (\$3 million), Minot and communities along the Mouse River (\$2.5 million), and the Souris River Joint Water Resource District (\$50,000) disaster relief projects.** Senators Grindberg, Bowman, Christmann, Erbele, Kilzer,

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

The Budget Section recessed for lunch at 11:36 a.m. and reconvened at 1:00 p.m.

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

Ms. Beth Zander, Director, Division of Workforce Development, Department of Commerce, provided information ([Appendix G](#)) 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 an eFolio Pilot Project Committee has been organized and includes representation from the State College of Science, Valley City State University, Job Service North Dakota, the University System, and the Department of Commerce. She said the project budget includes \$72,430 for administrative costs and \$77,570 for the purchase of eFolio individual user licenses, administrative tools, training, development of a North Dakota portal, and development of PDF conversion capability. She said the project plan has been finalized, instructors are being enlisted, implementation teams have been organized, vendor services and training have been identified, and system training dates chosen. She said Dakota College at Bottineau will also be involved in the project at a later date.

**DEPARTMENT OF COMMERCE -  
ECONOMIC ACTIVITY AND  
PERSONAL INCOME GROWTH**

Mr. Alan Anderson, Commissioner, Department of Commerce, provided information ([Appendix H](#)) on economic activity in western North Dakota and personal income growth in North Dakota during the past five years.

Mr. Anderson said the department is involved in sustaining and leveraging the economic growth experienced in western North Dakota related to oil

and natural gas development. He said the department is exploring related manufacturing opportunities and working with partners to address challenges associated with the growth. He said the department is organizing a series of townhall meetings to be held in January 2012 in 13 cities in western North Dakota and will also involve the Department of Transportation, the State Engineer, the Department of Trust Lands, and the Housing Finance Agency. He said these meetings will provide updates on the state's efforts to address the impacts of increased oil activity and to gather input from local representatives on other issues and concerns. He provided statistics from Governor Jack Dalrymple's recent update on the state's efforts to address the impacts created by oil and gas development in western North Dakota, including a summary of the \$1.2 billion available to address the impacts, \$315 million expenditures to date, and the remaining \$885 million to be distributed in the 2011-13 biennium.

Mr. Anderson said personal income increased over 40 percent from \$20.5 billion in 2005 to \$28.8 billion in 2010. He said this growth includes an increase in farm income of 117 percent and nonfarm income related to mining of 206 percent. He said per capita personal income grew 34.5 percent from \$31,795 in 2005 to \$42,764 in 2010, compared to a national average increase of 12.7 percent. He said North Dakota moved from less than 90 percent to 107 percent of the national average of per capita personal income from 2005 to 2010 and from being ranked 36<sup>th</sup> in the nation in 2005 to 11<sup>th</sup> in 2010.

**ADJUTANT GENERAL REPORTS**

Chairman Grindberg called on Mr. Greg Wilz, Director, Homeland Security Division, Department of Emergency Services, and State Security Advisor, Adjutant General, to provide an update on 2011 flood disasters and related expenditures ([Appendix I](#)). Mr. Wilz said estimated 2011 flood disaster costs relating to public response, recovery, and mitigation total \$803 million as of December 13, 2011, of which the estimated state share is \$47.08 million. He said this estimate does not include Small Business Administration (SBA) loans (\$242.55 million as of November 23, 2011) or individual home and business owner damages (\$452 million estimated as of November 3, 2011). 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 direct	\$27.7	\$1.70	\$17 million of this amount involves the Adjutant General and requires a 10 percent state match.
State indirect	25.0	1.75	Mission assignments require 7 percent state match and 3 percent local share.
Public assistance	320.0	22.40	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 Senate Bill No. 2369).

	Current Projection (Amounts Shown in Millions)	State Share (Amounts Shown in Millions)	State Share Description
Individual assistance	323.0 <sup>1</sup>	2.50	The other needs assistance category of individual assistance requires a 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 Senate Bill No. 2369).
Hazard mitigation	107.0	18.73	
Total	\$802.7	\$47.08	

<sup>1</sup>The following chart provides information on individual assistance awarded by county or tribe as of November 23, 2011:

County/Tribe	Applications	Individual Housing Eligible	Individual Housing Amount	Housing Assistance Eligible	Housing Assistance Amount	Other Needs Eligible	Other Needs Amount	Total Funding
Barnes	114	70	\$136,803	68	\$133,140	11	\$3,663	\$273,606
Benson	89	52	62,791	51	58,122	11	4,669	125,582
Burleigh	1,097	782	2,772,282	757	2,707,243	219	65,038	5,544,563
McHenry	399	188	654,774	178	638,500	33	16,275	1,309,549
Morton	390	234	930,756	211	906,581	77	24,175	1,861,512
Ramsey	131	60	91,395	58	89,761	5	1,634	182,790
Renville	131	74	607,558	65	593,595	18	13,963	1,215,116
Richland	72	46	80,039	46	78,297	3	1,742	160,078
Spirit Lake Tribe	28	16	25,729	15	25,544	1	185	51,458
Ward	7,723	5,932	89,420,737	5,891	87,451,636	1,042	1,969,101	178,841,474
Other	109							
Total	10,283	7,454	\$94,782,864	7,340	\$92,682,419	1,420	\$2,100,445	\$189,565,728

Mr. Wilz said SBA loans may be provided for physical structural damages as well as economic loss resulting from the 2011 flood--economic injury disaster loan (EIDL). He said SBA loan approvals as of November 23, 2011, include:

County	SBA Loans Approved	SBA Loan Amount
Barnes	8	\$276,000
Benson	1	44,300
Burleigh	179	10,666,700
Emmons	1	7,500
McHenry	19	882,100
Morton	60	3,377,300
Ramsey	4	60,500
Renville	8	399,900
Richland	4	157,700
Ward	2,079	226,678,200
Total	2,363	\$242,550,200

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

Mr. Dave Krabbenhoff, Administrative Director, Department of Corrections and Rehabilitation, presented a report ([Appendix J](#)) 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 35 percent complete and on budget and on time. He said the project budget is \$64 million, and as of November 2011 project expenditures total

\$25.2 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, Chief, Environmental Health Section, State Department of Health, presented information ([Appendix K](#)) 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 for the purpose of defraying expenses associated with legal action against the EPA. He said as of August 2011, \$152,784 has been expended 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.
- 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.

- Regional haze state implementation plan - Relates to the EPA challenge of 25 percent of the state's proposed implementation plan to comply with requirements of the regional haze rule.
- Other state challenges to consent agreements which directly impact North Dakota but were developed between the EPA and environmental groups.

### **SCHOOL OF MEDICINE AND HEALTH SCIENCES - RESIDENCY PROGRAM EXPANSION PROJECT**

Chairman Grindberg called on Dr. Joshua Wynne, Vice President for Health Affairs, and Dean, School of Medicine and Health Sciences, University of North Dakota, Grand Forks, to provide information ([Appendix L](#)) regarding the additional funding provided by the Legislative Assembly in 2011 for expansion of the medical school's residency program. Dr. Wynne said two out of three UND medical school graduates who complete a residency in North Dakota stay in state to practice long-term; therefore, the residency program expansion is an essential component of physician retention in the state. He said six applications were received in response to a request for proposal sent to all current residency program directors, chairs of clinical departments at the School of Medicine and Health Sciences, chief executive officers of hospitals in North Dakota, the North Dakota Medical Association, the North Dakota Hospital Association, and the Center for Rural Health. He said the School of Medicine and Health Sciences Advisory Council approved six applications for funding. He said four of the proposed programs plan to accept residents as of July 2012, and eight of the nine new residency positions will be allocated to those programs. He said the other two programs will not be prepared to accept residents until the 2013-15 biennium. He said the remaining allocated funds will be used to defray planning expenses. He said the successful applicants include:

- UND Department of Family and Community Medicine - Two positions for rural family medicine training--one for the Center for Family Medicine in Bismarck and one for the Center for Family Medicine in Minot.
- UND Department of Surgery - Three positions for training in rural general surgery.
- Altru Hospital Family Medicine Program - Two positions for training in rural family medicine.
- St. Alexius Hospital, Bismarck - One position for training in hospitalist practice with rural experience.

- UND Department of Obstetrics and Gynecology - Approval of funding to support planning for a new program for residency training in obstetrics and gynecology.
- Essentia Health, Fargo - Approval of funding to support planning for a new family medicine residency with rural emphasis.

In response to a question from Representative Delzer, Dr. Wynne said funding for one of the nine residency positions provided by the Legislative Assembly in 2011 will be spent on planning, and funding will be requested for that residency position in the 2013-15 biennium. He said eight of the nine residency positions will be accepting residents in the summer of 2012. He said St. Alexius Hospital reported that 15 applicants have applied for the one available residency position.

### **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 M](#)) 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. She said the department has made changes to the agency website, including adding a link to review rate information. She said the state electronic rate and form filing system is being enhanced to meet rate review reporting requirements of PPACA.

Ms. Ternes said House Bill No. 1476 approved by the legislature during the 2011 special session amended Section 26.1-36-46 relating to external review procedures. As a result, she said, the Insurance Department has requested a redetermination by HHS of the state's compliance with PPACA relating to internal appeals and external review of health insurance claims.

Ms. Ternes said House Bill No. 1475 approved by the Legislative Assembly during the 2011 special session authorizes four new full-time equivalent positions and appropriated \$642,350 of special funds for implementation of the federal Affordable Care Act. She said the Insurance Department has begun advertising for an actuary position and expects to advertise for the other three positions soon.

Ms. Ternes said HHS has announced the Level I establishment grant for funding to establish a health benefit exchange deadline has been extended to June 30, 2012. She said North Dakota has not applied for the grant.

**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 N](#)) regarding the Medicaid management information system (MMIS) project. She said the MMIS project budget is \$62.5 million, and expenditures through October 2011 total \$41.7 million as presented on the following schedule:

Description	Budget	Spent Through October 2011	Remaining
General fund	\$5,117,427	\$2,792,337	\$2,325,090
Federal funds	55,218,418	36,667,410	18,551,008
Other funds	2,193,526	2,193,526	0
<b>Total</b>	<b>\$62,529,371</b>	<b>\$41,653,273</b>	<b>\$20,876,098</b>

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

Component	Cost as of October 2011
MMIS	\$24,045,111
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	2,725,000
Longitudinal financial analysis reporting	
Clinical outcome and disease management analysis	
Ad hoc reporting	
Independent verification and validation services	3,959,345
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	9,391,391
Project management services	
Software development	
Systems administration	
Other	1,532,426
Subject matter experts	
Facilities	
<b>Total</b>	<b>\$41,653,273</b>

Ms. Witham said that as of December 6, 2011, 29,131 Medicaid claims were in suspense--5,793 more than the 23,338 claims reported in September 2011.

In response to a question from Senator Kilzer, Ms. Witham said she does not believe the new MMIS will be difficult to use. She said online and regional training opportunities will be provided.

**RACING COMMISSION -  
REVENUE UPDATES**

Mr. Winston E. Satran, Director, Racing Commission, presented information ([Appendix O](#)) regarding potential revenue increases related to administrative rule changes and a potential licensing contract. He said the Racing Commission seeks to expand horse racing in North Dakota. He said the commission hopes to reinstate racing in Fargo and to assist the Fargo track in meeting financial obligations to the city of Fargo and the Fargo-Moorhead Economic Development Corporation. He said opportunities have arisen which may assist the commission to become self-sustaining and to provide funding to expand in the horse racing industry in North Dakota. He said the opportunities include account deposit wagering companies, administrative rules changes regarding the types of allowable betting, and self-serve kiosks.

Mr. Satran said the Legislative Assembly in 2009 reduced the tax rates for account deposit wagering as an incentive for account deposit wagering companies to conduct business in the state and become licensed by the Racing Commission. He said the commission has licensed nine account wagering companies in the past two years, of which four are expected to discontinue operations. However, he said, three new companies have applied for an account deposit wagering license, and the New York Racing Association has expressed interest in attaining an account deposit wagering license. He said the New York Racing Association is a nonprofit corporation that owns three major New York tracks--Belmont, Aqueduct, and Saratoga. He said if the association becomes licensed in the state, it would result in an immediate increase in handle by an estimated \$300 million per year.

Mr. Satran said three new types of bets that are not used in any other United States location have been created by the Racing Commission in its administrative rules. He said the bet that has created the most interest is the Mad Scramble, which requires choosing six horses in their exact finishing order to win the daily pool and an opportunity to win the carryover pool from previous Mad Scramble races. He said the bet has caused international interest. He said there has been some question on the legality of this wager, and it is being considered by the Legal Review Committee of the Racing Commissioner's International Pari-Mutuel Audit Committee. He said

the commission is awaiting the decision of the audit committee.

Mr. Satran said the Racing Commission has entered contracts with Horse Race North Dakota, the Cowboy Hall of Fame, Fort Lincoln Foundation, and a Canadian company for the operation of self-serve kiosks. He said the kiosks are self-contained and provide viewing of live racing and wagering at locations throughout North Dakota. He said companies that have created self-serve kiosks permitting public access to Internet wagering are required to be licensed in the state.

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

Chairman Grindberg announced that the Legislative Council staff distributed to each member a written summary report ([Appendix P](#)) 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**

Chairman Grindberg announced the next meeting of the Budget Section is tentatively scheduled for Tuesday, March 13, 2012.

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

The meeting adjourned subject to the call of the chair at 2:47 p.m.

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Sara E. Pahlke  
Fiscal Analyst

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:16