

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

GOVERNMENT FINANCE COMMITTEE

Thursday, March 13, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Terry M. Wanzek, Vice Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Larry Bellew, Joshua A. Boschee, Bette Grande, Craig Headland, Rick Holman, Lisa Meier, Kylie Oversen, Don Vigesaa; Senators Dwight Cook, Gary A. Lee, Donald Schaible, Ronald Sorvaag, Terry M. Wanzek, Rich Wardner

Members absent: Representatives Jeff Delzer, Clark Williams

Others present: Mr. John Bjornson, Legislative Council, Bismarck
Senator Ray Holmberg, member of the Legislative Management, was also in attendance.
See [Appendix A](#) for additional persons present.

It was moved by Senator Lee, seconded by Representative Meier, and carried on a voice vote that the minutes of the February 12, 2014, meeting be approved as distributed.

STATE BUDGET INFORMATION**Status of the General Fund**

Ms. Pam Sharp, Director, Office of Management and Budget, presented information ([Appendix B](#)) regarding the status of the general fund and the current balances of major state funds. She presented the following information on the status of the general fund for the 2013-15 biennium:

Unobligated general fund balance - July 1, 2013		\$1,396,059,186
Balance obligated for unspent emergency appropriation authority		165,874,199
Balance obligated for authorized carryover from the 2011-13 biennium		89,503,462
Total beginning general fund balance - July 1, 2013		\$1,651,436,847
Add		
General fund collections through February 2014	\$1,971,694,566	
Forecasted general fund revenue for the remainder of the 2013-15 biennium	3,622,197,469	
Total revenues		5,593,892,035
Total available		\$7,245,328,882
Less		
Legislative appropriations - One time	(\$2,433,567,701)	
Legislative appropriations - Ongoing	(4,429,019,653)	
Authorized carryover from the 2011-13 biennium	(89,503,462)	
2013-15 emergency appropriations utilized in the 2011-13 biennium	163,812,041	
Total appropriations		(6,788,278,775)
Estimated ending general fund balance - June 30, 2015		\$457,050,107 ¹

¹Pursuant 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.

Status of Major Special Funds

Ms. Sharp presented the following information regarding the balances of major state funds as of February 28, 2014:

Budget stabilization fund	\$583,545,799
Legacy fund	\$1,770,099,322
Foundation aid stabilization fund	\$421,644,404
Property tax relief fund	\$640,986,860
Strategic investment and improvements fund	\$1,007,886,343

The Legislative Council staff presented a memorandum entitled [Status of the Common Schools Trust Fund](#). As of December 31, 2013, the balance of the common schools trust fund was \$2,763,790,799. Oil extraction tax

deposits in the fund from July 2013 through December 2013 totaled \$75,529,093, which is \$7,141,952 more than anticipated in the 2013 legislative revenue forecast.

Senator Cook suggested the committee receive information regarding the history of the common schools trust fund, including a review of the federal Enabling Act of 1889 that provided the state with land for the benefit of common schools and the intended uses of the fund to benefit common schools.

Senator Cook suggested the committee receive information regarding the investment strategy of the common schools trust fund and limitations on how the fund may be invested.

The Legislative Council staff presented a memorandum entitled [Status of the Resources Trust Fund](#). As of January 31, 2014, the balance of the resources trust fund was \$392,621,636. Oil extraction tax deposits in the fund from July 2013 through January 2014 totaled \$148,961,335, which is \$13,546,363 more than anticipated in the 2013 legislative revenue forecast.

PURCHASE OF THE RESEARCH ENTERPRISE AND COMMERCIALIZATION BUILDING AT THE UNIVERSITY OF NORTH DAKOTA

Dr. Robert Kelley, President, University of North Dakota, Grand Forks, said the University of North Dakota (UND) prepared information for the committee regarding the Research Enterprise and Commercialization (REAC) building. He introduced Ms. Alice Brekke, Vice President for Finance and Operations, University of North Dakota, Grand Forks, to present the information.

Ms. Brekke presented information ([Appendix C](#)) regarding the REAC building, including sources of funds to purchase building equipment and furniture, the amount of space leased in the building, restrictions on building use due to federal grants, and the source of funds the institution intends to use to repay the loan used to purchase the building.

Ms. Brekke said she reviewed documents relating to the planning of the REAC building that indicated the building size was reduced to 50,000 square feet from 70,000 square feet as originally planned. She said during the planning phase, the estimated cost of a 50,000-square-foot building was \$12.5 million. However, she said, due to a lack of documentation, she was unable to determine the rationale for constructing the building to its size.

In response to a question from Representative Grande, Ms. Brekke said the building was constructed by the UND Research Foundation and detailed planning records are not available. She said the original members of the UND Research Foundation Board of Directors are no longer serving on the board.

Senator Holmberg expressed concern regarding the lack of planning and documentation for the building. He said the Legislative Assembly needs assurance that a situation like this does not happen again.

In response to a question from Senator Cook, Ms. Brekke said the minutes of the UND Research Foundation Board of Directors meetings include very limited information.

Ms. Brekke said the UND Research Foundation purchased equipment and furniture for the building at a cost of \$1,780,656. She said the sources of funding for the equipment and furniture purchases included \$871,497 from the federal Department of Energy, \$207,954 of centers of excellence funding, and \$701,205 from operating revenue.

Ms. Brekke said a \$1.5 million federal Economic Development Administration grant was used for a portion of the building construction costs. She said there are certain limitations regarding the use of the building due to the grant. She said a maximum of 20 percent of leasable space in the building may be used for offices. She said repayment of the grant would remove the space use restrictions on the building.

Ms. Brekke presented the following schedule detailing the amount of space leased in the REAC building for fiscal years 2009 through 2013 and the related lease income:

Fiscal Year	Square Feet Leased	Lease Income
2009 ¹	17,964	\$252,049
2010	17,964	\$547,693
2011	30,893 ²	\$1,039,706
2012	30,893 ²	\$1,774,209
2013	22,066	\$604,022

¹The facility was first occupied in January 2009.

²Includes 10,502 square feet leased by UND in fiscal year 2011 and 9,262 square feet leased by UND in fiscal year 2012. The space was leased pursuant to an agreement between UND and the UND Research Foundation.

In response to a question from Representative Meier, Ms. Brekke said approximately 55 percent of the facility space is leased.

In response to a question from Senator Lee, Ms. Brekke said UND and the UND Research Foundation entered agreements for UND to lease a certain amount of unleased space in the REAC building during fiscal years 2011 and 2012. She said in fiscal year 2013, UND did not lease space in the REAC building and instead made support payments to the UND Research Foundation.

In response to a question from Senator Sorvaag, Ms. Brekke said even though UND was providing lease payments to the UND Research Foundation, there was not a significant amount of space actually used by UND.

In response to a question from Representative Grande, Ms. Brekke said UND now controls the building including the leases.

Representative Grande suggested the committee receive information regarding the square footage of office and other space leased by UND off campus.

Representative Headland questioned why UND would purchase a building that is underperforming in its intended usage. He said the federal grant restrictions on building use also limit the ability of UND to move offices or departments to the facility.

Ms. Brekke said the building is intended to have a life science focus. She said the university believes there are significant opportunities to develop partnerships with private entities in life science areas. She said the university has hired an individual to market the facility and increase the amount of space leased to private entities.

Senator Wanzek suggested the committee receive additional information from the individual hired to market the REAC building regarding the plan to increase the amount of space leased in the building.

In response to a question from Representative Holman, Ms. Brekke said the use of the building did not change when UND purchased the building from the UND Research Foundation. She said the tenants leasing space in the building are private sector entities. She said any intellectual property developed by the private sector entities is owned and maintained by the private sector entity.

Senator Holmberg said Section 23 of 2013 Senate Bill No. 2003 authorized the State Board of Higher Education to purchase the REAC building using donations, gifts, or other funds. However, he said, the request for proposal issued by UND for a loan to purchase the building indicated the institution would have access to state-appropriated funds to repay the loan. He suggested the committee receive information from the Legislative Council staff regarding whether the contract entered between UND and Bremer Bank for the building loan is void or voidable due to the request for proposal being in conflict with state law.

In response to a question from Representative Meier, Ms. Brekke said UND obtained a \$9.8 million loan from Bremer Bank to purchase the REAC building. She said she will provide information to the committee regarding the current outstanding loan balance.

In response to a question from Senator Cook, Ms. Brekke reviewed a document ([Appendix D](#)) detailing the proposals received by UND in response to the request for proposal for a loan to purchase the REAC building. She said responses were received from four financial institutions that had various interest rates, origination fees, and other loan terms. She said UND selected the proposal from Bremer Bank.

In response to a question from Senator Wanzek, Ms. Brekke said the Bremer Bank proposal was for a 20-year loan with a 5.38 percent interest rate.

Mr. Murray G. Sagsveen, Chief of Staff, North Dakota University System, presented information ([Appendix E](#)) regarding loans obtained by North Dakota University System institution foundations. He said there are approximately 30 projects at nine institutions that required a foundation to obtain a loan.

In response to a question from Senator Cook, Mr. Sagsveen said he will provide information regarding any other University System foundation projects that have limitations on the use of facilities due to grant restrictions or other reasons.

Mr. Sagsveen said he will provide the committee with information regarding the process used by an institution foundation to construct a facility on state owned land.

Mr. Sagsveen presented information ([Appendix F](#)) regarding State Board of Higher Education policies relating to institution foundations. He said board policy requires each institution to have an agreement in place with an institution foundation that specifies several items, including services provided by each entity, accounting requirements, government functions delegated to the foundation, and reporting relationships for shared employees. He said there are currently 21 agreements in place between University System institutions and institution foundations.

Mr. Sagsveen said most institution-related records and meetings are subject to open records and meetings laws. He said there have been several Attorney General opinions issued that make it clear that certain institution foundation records are public.

Representative Grande expressed concern regarding the lack of records maintained by foundations. She said detailed minutes of foundation board meetings should be kept, especially when it relates to the construction of buildings on state-owned land.

In response to a question from Representative Grande, Mr. Sagsveen said every institution foundation must keep minutes of all board meetings, and the minutes must meet the requirements of state open meetings laws.

In response to a question from Representative Grande, Mr. John Bjornson, Assistant Code Revisor, Legislative Council, said Section 44-04-21 requires minutes of public meetings to include at a minimum the names of members in attendance, the date and time the meeting was called to order and adjourned, a list of topics discussed, a description of each motion made and whether the motion was seconded, and the results of votes including the vote of each member on recorded roll call votes.

Written testimony ([Appendix G](#)) from representatives of various University System institution foundations was distributed to the committee.

Dr. Jolynne Tschetter, Commercialization Manager, Department of Commerce, presented information ([Appendix H](#)) regarding department practices to monitor centers of excellence projects. She said the process to monitor projects includes at least quarterly contact with recipients, a site visit, a review by a third-party auditor, and an annual functional review. She said the annual functional review includes a comprehensive review of documentation of matching grants, project benefits, progress toward project sustainability, and variations from the original project proposal.

Mr. Bjornson presented a memorandum entitled [Lease of State-Owned Land for Construction of Research Building at University of North Dakota](#).

At the request of Vice Chairman Wanzek, Dr. Larry Skogen, Interim Chancellor, North Dakota University System, provided comments regarding a recent information technology security issue. He said a University System server that contained student data was accessed by an unauthorized individual.

Ms. Linda Donlin, Director of Communications and Media Relations, North Dakota University System, said current and former University System students are being notified of the security breach. She said students that had personal data on the server will be provided free identity theft protection for one year.

Dr. Lisa Feldner, Vice Chancellor for Information Technology and Institutional Research, North Dakota University System, said internal forensics indicate the unauthorized user did not access student files. She said the server contained over 73,000 files.

In response to a question from Senator Wardner, Dr. Feldner said the University System participates in various scenarios to test the security of information technology equipment.

STUDY OF THE FOUNDATION AID STABILIZATION FUND

The Legislative Council staff reviewed a bill draft [[15.0055.02000](#)] clarifying the use of the foundation aid stabilization fund and budget stabilization fund for state school aid payments in the event of a general fund revenue shortfall. The bill draft provides for the first 2.5 percent general fund revenue shortfall, the foundation aid stabilization fund is to be used to offset the shortfall relating to state school aid payments. For any revenue shortfall in excess of 2.5 percent, the budget stabilization fund is to be used first to offset the shortfall, and the foundation aid stabilization fund is to be used to offset the shortfall once the budget stabilization fund is depleted.

The Legislative Council staff presented a memorandum entitled [Use of Foundation Aid Stabilization Fund and Budget Stabilization Fund for State School Aid Payments - Based on Bill Draft 15.0055.02000](#). The memorandum

provides information on the amount of funding that would be used from the foundation aid stabilization fund and budget stabilization fund to offset a revenue shortfall based on the Tuesday, June 30, 2015, estimated balances of the funds, the 2013-15 biennium appropriations, and the provisions included in the bill draft as follows:

Use of Foundation Aid Stabilization Fund and Budget Stabilization Fund to Offset Allotments - Based on Bill Draft 15.0055.02000			
Allotment/Revenue Shortfall Amount	State School Aid Payments - General Fund	Other General Fund Appropriations	Total
First 2.5 percent - Foundation aid stabilization fund	\$42,384,350	\$0	\$42,384,350
From 2.5 to 11 percent - Budget stabilization fund ¹	\$144,162,591	\$439,383,208	\$583,545,799
From 11 to 44.8 percent - Foundation aid stabilization fund	\$573,052,441	\$0	\$573,052,441

¹The Legislative Assembly in 2013 House Bill No. 1015 provided \$720 million of general fund appropriations be excluded from the calculation used to determine the maximum balance of the budget stabilization fund. Therefore, the current fund balance of the budget stabilization fund is equal to approximately 8.5 percent of total general fund appropriations for the 2013-15 biennium.

In response to a question from Senator Lee, the Legislative Council staff said the foundation aid stabilization fund was created in 1995 and has been used once to offset a budget allotment.

Senator Holmberg said the fund was created in part due to revenue shortfalls in the 1980s that affected state school aid payments.

In response to a question from Representative Headland, the Legislative Council staff said a constitutional amendment is required to provide for a maximum balance in the foundation aid stabilization fund. The amendment would need to specify where any excess funds would be deposited if the fund reached a maximum balance.

STUDY OF THE LASTING BENEFITS OF THE LEGACY FUND

The Legislative Budget Analyst and Auditor presented a bill draft [[15.0057.03000](#)] clarifying provisions relating to the legacy fund. The bill draft provides several definitions for constitutional provisions relating to the legacy fund and clarifies the process used to determine limitations on expenditures from the legacy fund. The bill draft also provides earnings transferred from the legacy fund to the general fund at the end of a biennium are to be transferred back to the legacy fund and become principal unless certain criteria are met.

In response to a question from Senator Cook, the Legislative Budget Analyst and Auditor said the bill draft would preclude the Governor from recommending appropriations of fund principal or earnings in the executive budget recommendation.

In response to a question from Representative Bellew, the Legislative Budget Analyst and Auditor said a two-thirds vote of the House and Senate is required to appropriate the principal of the legacy fund.

In response to a question from Senator Wanzek, the Legislative Budget Analyst and Auditor said fund earnings are required by the constitution to be transferred to the general fund at the end of each biennium. He said the bill draft provides for the fund earnings to be immediately transferred back to the legacy fund to become part of the fund principal.

The committee recessed for lunch at 11:50 a.m. and reconvened at 1:00 p.m.

STUDIES OF STATE EMPLOYEE BENEFIT ISSUES

Mr. Sparb Collins, Executive Director, Public Employees Retirement System, presented information ([Appendix I](#)) regarding the actuarially calculated costs relating to the public employees defined benefit retirement plan if state employees hired after Friday, January 1, 2016, were required to participate in a defined contribution benefit plan instead. He said if the defined benefit plan was closed to new employees, the state portion of the plan would be able to pay benefits until the year 2046. He said there would be a projected contribution shortfall of \$3,688,100,000 for future benefits to be paid after 2046. He said a payment of \$162.8 million could be made to the retirement plan on Wednesday, July 1, 2015, to fully offset the state portion of the future projected contribution shortfall.

Mr. Collins said the actuarially calculated costs were prepared by The Segal Company. He said The Segal Company is under contract with the Public Employees Retirement System (PERS) to provide actuarial information regarding the retirement plan.

In response to a question from Representative Grande, Mr. Collins said the actuarial value of plan assets and liabilities recognizes investment gains and losses over a five-year period. He said this reduces the volatility of the actuarial fund balances.

In response to a question from Representative Vigesaa, Mr. Collins said the funded status of the retirement plan is estimated to decrease in the short term and then increase. He said the Legislative Assembly recently approved increases in the employer and employee contributions to the plan which will increase, over time, the funded status of the plan.

In response to a question from Representative Bellew, Mr. Collins said the actuarial review of the plan assumes an 8 percent return on investment. He said the estimated rate of return is based on historical investment returns for the plan.

Representative Headland said significant changes in investment returns may affect the amount of the payment needed to fully fund future contribution shortfalls.

In response to a question from Senator Wanzek, Mr. Collins said the estimated payment of \$162.8 million needed to fully fund the state portion of the plan if it were closed to new employees is based on an 8 percent investment return. However, he said, the asset allocation of the plan's investments may need to be adjusted near the projected end of the plan, which to move short-term investments would potentially reduce the plan's investment return.

Mr. Collins presented an overview ([Appendix J](#)) of financial reporting changes contained in Governmental Accounting Standards Board (GASB) Statement Nos. 67 and 68. He said the statements provide for changes in how state and local governments report pension liabilities and expenses on their financial statements. He said a net pension liability will be reported that is the difference between total pension liability and the pension assets. He said information is also required to be reported regarding how changes to the net present value discount rate may affect net pension liability. He said the GASB statements affect only how the financial data is reported on the organization's financial statements. He said the GASB statements do not affect the methods used to calculate the actuarially funded status of retirement plans.

At the request of Vice Chairman Wanzek, the Legislative Budget Analyst and Auditor provided information regarding options to have a consultant provide an independent actuarial review of costs to close the defined benefit plan to new employees. He said the estimated cost to have an actuary review the results prepared by The Segal Company is \$30,000. He said the estimated cost to have an actuary replicate the data to determine the cost to close the defined benefit plan to new employees is \$50,000.

Senator Wardner said he supports the use of an independent actuary to review the costs to close the defined benefit plan for new employees.

Senator Wanzek said an independent review of costs to close the defined benefit plan is appropriate due to the large amount of funding involved.

Senator Cook said it may not be beneficial to have an independent review. He said the actuarial costs of the retirement plan are based on several variables and assumptions that may change.

In response to a question from Representative Boschee, Mr. Collins said PERS engages a separate actuary approximately every 10 years to review the calculations and results made by the actuary under contract with PERS.

In response to a question from Representative Grande, Mr. Collins said PERS first contracted with The Segal Company over 20 years ago. He said every five years, the plan assumptions are reviewed to determine if they are still valid.

Senator Schaible said he supports the use of an independent actuary to verify the calculations made by The Segal Company. He said during past legislative sessions, concerns have been expressed regarding the accuracy of actuarial estimates relating to proposed changes to the retirement plan. He said using an independent actuary would verify if the data is correct.

Representative Boschee said PERS has engaged The Segal Company for several decades, and there has not been any concern with their calculations. He said PERS would have discontinued its association with The Segal Company if there was concern with the data provided.

Senator Lee said the issue being discussed will have a long-term impact on the state, and an independent review of the data is important to ensure the data is accurate.

In response to a question from Senator Cook, the Legislative Budget Analyst and Auditor said the consultant would have the ability to use different assumptions in their actuarial review than those used by The Segal Company.

Senator Cook said there has not been any discussion regarding changes to the plan assumptions. He said the committee may need to have a thorough review of plan assumptions if they can be changed. He said changing plan assumptions can have a significant impact on the results of an actuarial review.

Senator Wardner said reviewing the assumptions will allow committee members to better understand the actuarial calculations and will allow committee members to provide input on the assumptions.

Senator Sorvaag said there may be some concern with changing the plan assumptions. He said changing the assumptions will not provide for an accurate comparison between the independent consultant's results and the results calculated by The Segal Company.

It was moved by Senator Lee, seconded by Representative Vigessaa, and carried on a roll call vote to seek approval from the Chairman of the Legislative Management to hire a consultant at an estimated cost of \$50,000 to provide an independent actuarial review of costs relating to closing the defined benefit plan to new state employees hired after Thursday, December 31, 2015, and to request the committee chairman and Legislative Council staff to prepare and distribute a request for proposal if approval is received. Representatives Bellew, Grande, Headland, Holman, Meier, and Vigessaa and Senators Lee, Schaible, Wanzek, and Wardner voted "aye." Representatives Boschee and Oversen and Senators Cook and Sorvaag voted "nay."

The Legislative Budget Analyst and Auditor presented a document ([Appendix K](#)) comparing hypothetical employee benefits under a defined benefit, defined contribution, and hybrid retirement plan using specific assumptions.

The Legislative Council staff distributed a report ([Appendix L](#)) prepared by the National Conference of State Legislatures detailing the amount of health insurance premiums paid by other states for state employees during 2012. The report indicated the average monthly cost of a standard individual health insurance policy was \$562.69, with the state paying on average \$492.50 and the employee paying on average \$70.40. The average monthly cost of a family health insurance policy was \$1,412.52, with the state paying on average \$1,111.74 of the premium and the employee paying on average \$300.50.

In response to a question from Representative Grande, Mr. Collins said the state health insurance plan may lose its grandfathered status under the federal Affordable Care Act if the percentage of health insurance premiums paid by state employees increases by more than 5 percent.

Representative Grande suggested the committee receive information regarding the state employees share of the cost of health insurance premiums if employees were required to pay 5 percent of the premium.

STUDY OF THE PROCESS OF APPROPRIATING STATE AGENCY SALARIES AND WAGES

Ms. Sharp presented information ([Appendix M](#)) regarding the use of temporary employees by state agencies. She said the total number of temporary employees used by state agencies varied from 944 to 1,427 during calendar year 2013. She said state agencies spent \$36 million on temporary employee salaries during the 2011-13 biennium.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Senator Cook suggested the Legislative Council staff send a letter to the federal Economic Development Administration regarding federal grant restrictions on the REAC building.

No further business appearing, Vice Chairman Wanzek adjourned the meeting at 2:45 p.m.

Brady A. Larson
Assistant Legislative Budget Analyst and Auditor

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:13