

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

GOVERNMENT FINANCE COMMITTEE

Wednesday, February 3, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Jeff Delzer, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Jeff Delzer, Rick C. Becker, Glen Froseth, Jessica Haak, Craig Headland, Jim Kasper, Vernon Laning, Mike Lefor, Scott Louser, Chet Pollert, Jim Schmidt, Vicky Steiner, Don Vigasaa, Kris Wallman; Senators Ron Carlisle, Ralph Kilzer, Richard Marcellais, Ronald Sorvaag

Members absent: Representatives Joshua A. Boschee, Eliot Glassheim, Kim Koppelman

Others present: Senator Donald Schaible, member of the Legislative Management, was also in attendance. See [Appendix A](#) for additional persons present.

It was moved by Representative Headland, seconded by Representative Vigasaa, and carried on a voice vote that the minutes of the October 7, 2015, meeting be approved as distributed.

Chairman Delzer said that Representative Glassheim had traveled to Bismarck for the meeting but was unable to attend due to health reasons.

STATE BUDGET INFORMATION

Ms. Pam Sharp, Director, Office of Management and Budget, presented information ([Appendix B](#)) regarding the status of the general fund, current fund balances of major state funds, an updated forecast of 2015-17 biennium revenues, and plans for budget allotments and budget stabilization fund transfers. She said the original 2015-17 legislative revenue forecast anticipated \$5,638,508,192 in 2015-17 general fund revenues. She said the February 2016 revised revenue forecast anticipates \$4,564,313,850 in 2015-17 general fund revenues, a decrease of \$1,074,194,342. She said the nearly \$1.1 billion general fund revenue shortfall will be addressed with a general fund allotment of 4.05 percent saving an estimated \$244,869,588, a transfer of \$497,591,654 from the budget stabilization fund, and the use of 2013-15 excess revenue and carryover and the \$211 million 2015-17 estimated ending general fund balance provided by the 2015 Legislative Assembly. She said the original 2015-17 legislative revenue forecast anticipated over \$3.43 billion in 2015-17 oil and gas gross production and oil extraction tax revenues. She said the February 2016 revised revenue forecast anticipates \$2.47 billion in 2015-17 oil tax revenues, a decrease of \$967.4 million. She said projected oil tax revenues to be allocated to the oil and gas impact fund have been reduced by over \$111 million, from \$140 million to \$28.6 million.

In response to a question from Chairman Delzer, Ms. Sharp said new employment data will become available in the summer of 2016, which may affect allocations of oil tax revenue to hub cities. Chairman Delzer requested the Legislative Council staff provide further information regarding when the employment data will be made available and how it may affect oil tax revenue allocations.

Representative Becker requested information regarding the effect on 2015-17 oil tax collections of the oil tax trigger not being in effect for the first 6 months of the biennium and anticipated oil tax collections for the 2017-19 biennium at the 10 percent tax rate. Chairman Delzer asked the Legislative Council staff to provide additional information regarding projected oil tax revenues and the trigger.

In response to a question from Chairman Delzer, Ms. Sharp said the state paid Moody's Analytics an additional \$12,000 to prepare the revised forecast, as it was not part of the original contract.

In response to a question from Representative Becker regarding the allotment, Ms. Sharp said the allotment amount was determined by identifying the largest budget reduction amount that would not severely impact services of the Department of Human Services (DHS) and the Department of Corrections and Rehabilitation (DOCR). She said another revenue forecast will be completed in July or August 2016.

In response to a question from Chairman Delzer, Ms. Sharp said if the next revenue forecast is lower than the February 2016 revised forecast, a decision would be made whether to order a second allotment or transfer additional funding from the budget stabilization fund.

In response to a question from Chairman Delzer, Ms. Sharp said in discussions with agencies regarding the allotments, agencies are encouraged to consider 2017-19 biennium budgets when reducing their 2015-17 budgets.

In response to a question from Representative Pollert, Chairman Delzer said the allotments would be further discussed at future Budget Section and Government Finance Committee meetings.

In response to a question from Representative Haak, Ms. Sharp said the Office of Management and Budget (OMB) will provide further information to the committee when available regarding the budget reductions made by agencies.

The Legislative Budget Analyst and Auditor presented a memorandum entitled [2015-17 Biennium State Aid Distribution Fund Revenue - May 2015 Legislative Forecast Compared to February 2016 Revised Revenue Forecast](#). The Legislative Budget Analyst and Auditor said the original 2015-17 legislative revenue forecast anticipated \$303.2 million in 2015-17 state aid distributions and the February 2016 revised forecast anticipates \$224.4 million in 2015-17 state aid distributions, a decrease of \$78.8 million.

The Legislative Budget Analyst and Auditor presented a report entitled [Budget and Fiscal Trends \(January 2016\)](#). The Legislative Budget Analyst and Auditor said the revenues identified in the Budget and Fiscal Trends report do not reflect the February 2016 revised revenue forecast.

Chairman Delzer requested the Legislative Council staff to provide additional information regarding state revenues and appropriations trends in the 1980s.

In response to a question from Representative Becker, the Legislative Budget Analyst and Auditor said the Legislative Council will provide additional information regarding higher education authorized full-time equivalent (FTE) positions.

In response to a question from Representative Haak, the Legislative Budget Analyst and Auditor said the 12 percent property tax relief funding provided by the state was considered one-time funding, but ongoing property tax relief funding is included in the Department of Public Instruction's (DPI) budget for state school aid payments.

The Legislative Council staff presented a memorandum entitled [Estimated Revenue Sources and Distributions for Major State Funds for the 2015-17 Biennium](#), reflecting the 2015 legislative forecast. The Legislative Council staff said \$6.77 million in sales tax revenue designated for the senior citizen services and programs fund will not be affected by the reduction in projected sales tax revenue, but projected sales tax revenue for the state aid distribution fund and the general fund would be reduced.

The Legislative Budget Analyst and Auditor presented a memorandum entitled [Budget Reductions and Allotments, Bank of North Dakota Contingent Transfers, and Special Legislative Sessions Resulting from General Fund Revenue Shortfalls Since 1980](#). The Legislative Budget Analyst and Auditor said the most recent general fund budget allotment was a 1.05 percent allotment totaling \$18.3 million made during the 2001-03 biennium.

Mr. Eric Hardmeyer, President and Chief Executive Officer, Bank of North Dakota, presented information ([Appendix C](#)) regarding the status of the Bank's 2015-17 biennium budget and the contingent appropriation for the North Dakota financial center. He said the Bank has assets of \$7.4 billion and equity of \$749.5 million as of December 31, 2015. He said the Bank had calendar year 2015 net income of \$130.7 million. He said the majority of the Bank's income is generated from interest income. He said the Bank's calendar year 2015 net income met the contingency for the appropriation of \$17 million from the assets of the Bank to construct the North Dakota financial center, as provided for in Section 26 of 2015 House Bill No. 1014. He said the Bank is working with JLG Architects and various state agencies on planning for the North Dakota financial center. He said he believes the facility will be approximately 45,000 square feet and will be physically connected to the Bank of North Dakota building.

In response to a question from Representative Pollert, Mr. Hardmeyer said the Bank reserves \$70 million for credit losses. He said the Bank has increased the reserve to reflect changes in the state's economy. He said the reserve is currently approximately 1.6 percent of the total outstanding loan balance.

In response to a question from Representative Louser, Mr. Hardmeyer said most rebuilder loans relating to the 2011 flood disaster are unsecured. Chairman Delzer asked Mr. Hardmeyer to provide further information regarding the status of the rebuilder loans.

In response to a question from Representative Becker, Mr. Hardmeyer said banks are no longer allowed to service federally insured student loans. He said under the federal student loan program, the federal government sets the interest rates. He said the Bank has provided over \$300 million in DEAL One consolidation loans and has some of the lowest interest rates on these types of loans in the nation. He said the variable rates for the DEAL One loan program are 2 percent or less and long-term fixed rates for DEAL One loans are 4.5 percent to 5 percent.

In response to a question from Representative Kasper, Mr. Hardmeyer said the final cost of the new North Dakota financial center construction project is not yet determined.

Mr. Jerry Coleman, Director of School Finance and Organization, Department of Public Instruction, presented information ([Appendix D](#)) regarding state school aid funding, including estimated costs to continue. He said of the \$1.99 billion appropriated for state school aid, transportation aid, and special education aid, the department currently anticipates approximately \$20.5 million will not be spent during the 2015-17 biennium. He said student enrollment has increased from a low of 93,406 students in 2009 to 106,070 students in 2016, and is expected to continue to increase to 112,372 students in 2018. He said the estimated cost-to-continue current state school aid payment rates in the 2017-19 biennium is approximately \$164 million, of which \$81 million is the state's share.

Mr. Jamie Mertz, Director of Fiscal Management, Department of Public Instruction, presented information ([Appendix E](#)) regarding the status of DPI's 2015-17 budget, federal funding, and one-time funding. He said DPI's 2015-17 budget is approximately \$2.33 billion, of which \$288.1 million is from federal funds. He said DPI received one-time funding of \$30,000 to make changes to their child nutrition meal reimbursement payments computer system. He said DPI expects to spend under \$5,000 of the \$30,000 provided for the computer system changes. He said DPI received \$14.8 million of one-time funding for rapid enrollment grants and had awarded \$5.4 million as of December 31, 2015.

In response to a question from Chairman Delzer, Mr. Mertz said the rapid enrollment grants are awarded annually.

Mr. Lance Gaebe, Director, Energy Infrastructure and Impact Office, Department of Trust Lands, presented information ([Appendix F](#)) regarding the status of oil and gas impact grants. He said the 2015 Legislative Assembly designated \$132.5 million of the \$139.3 million appropriated from the oil and gas impact fund for oil and gas impact grants, including \$48 million for airports, \$30 million for school districts, \$10 million for law enforcement, \$10 million for critical access hospitals, \$6 million for emergency medical services, and \$28.5 million for other designated areas. He said the Board of University and School Lands had awarded \$42.4 million for the 2015-17 biennium as of January 28, 2016; however, based on the February 2016 revised revenue forecast, it appears only \$28.6 million will be available for oil and gas impact grants. He said \$18.6 million has been reimbursed or disbursed from the oil and gas impact fund for grants provided as of January 29, 2016.

Chairman Delzer said the Department of Trust Lands would be asked to present further information on oil and gas impact grants at a future meeting.

Ms. Deb McDermott, Chief Financial Officer, Department of Human Services, presented information ([Appendix G](#)) regarding DHS's Quarterly Budget Insight publication for the first quarter of the 2015-17 biennium. She said DHS spent 8.8 percent of the appropriation for temporary assistance for needy families (TANF), 11.8 percent of the appropriation for the supplemental nutrition assistance program (SNAP), and 6.6 percent of the appropriation for medical assistance in the first quarter of the 2015-17 biennium. She said the budget anticipated 12.5 percent of the TANF and SNAP appropriation amounts and 6.3 percent of the medical assistance appropriation amount to be spent in the first quarter.

In response to a question from Representative Becker, Ms. McDermott said DHS administrative costs represent approximately 4 percent of the DHS budget.

Chairman Delzer said DHS would be asked to present at a future meeting regarding budget allotments and other budget issues.

Ms. Brenda Weisz, Director, Accounting Division, State Department of Health, presented information ([Appendix H](#)) regarding the department's 2013-15 biennium salaries and wages spending. She said the department had unspent salaries and wages appropriations of approximately \$4.5 million, or 8 percent, of the

department's appropriation for 2013-15 salaries and wages. She said of the \$4.5 million, \$4.1 million was from federal or special funds and \$366,000 was from the general fund. She said the unexpended funds were primarily due to staff vacancies.

The Legislative Council staff presented a memorandum entitled [Agency Governance](#), providing information regarding the governing body or official for each state agency or institution.

The Legislative Council staff presented a memorandum entitled [Funding for State Employee Salaries and Benefits \(Excluding Higher Education\)](#), providing information regarding state employee compensation and benefits amounts provided for the 2005-07 biennium through the 2015-17 biennium. The Legislative Council staff said total salaries and benefits increased from \$875.4 million in the 2005-07 biennium to \$1.73 billion in the 2015-17 biennium, representing an average increase of 12.6 percent per biennium. The Legislative Council staff said if the state was to continue increasing appropriations for salaries and benefits at 12.6 percent, the future costs of salaries and benefits will increase to \$1.94 billion for the 2017-19 biennium and \$3.12 billion for the 2025-27 biennium.

Representative Kasper suggested the Legislative Council staff be asked to provide additional information regarding the increased costs of employee health insurance.

The Legislative Council staff presented a memorandum entitled [State Employee Bonuses](#), providing information regarding state employee bonuses authorized by law and the amount of bonuses paid since the 2009-11 biennium. The Legislative Council staff said performance bonuses have increased from \$469,458 awarded during the 2009-11 biennium to \$692,748 awarded during the 2013-15 biennium. Retention bonuses amounts have varied from \$1.53 million awarded during the 2009-11 biennium, to \$702,455 awarded during the 2011-13 biennium, to \$1.45 million awarded during the 2013-15 biennium.

STUDY OF STATUTORY AND REGULATORY REQUIREMENTS RELATING TO FEDERAL FUNDING

Mr. Dave Krabbenhoft, Director of Administration, Department of Corrections and Rehabilitation, presented information ([Appendix I](#)) regarding statutory and regulatory requirements relating to federal funding. He said DOCR administers four federal grant programs, including programs for crime victims assistance, crime victims compensation, state criminal alien assistance, and juvenile justice and delinquency prevention. He said DOCR also receives federal funds through grants administered by DPI and the Department of Career and Technical Education. He said DOCR receives approximately \$5.7 million in federal funding from the grant programs it administers. He said certain status reports and audits are required due to the use of federal funds.

Mr. Krabbenhoft said DOCR is also required to comply with the national Prison Rape Elimination Act (PREA) standards, or the state would be subject to the loss of 5 percent of federal Department of Justice grant funds. He said all DOCR correctional facilities are currently PREA compliant and continued compliance is critical to DOCR operations, as noncompliance would prevent DOCR from continuing its housing contract with the Bureau of Prisons and could potentially lead to litigation by the Department of Justice. He said the ability to contract with the Bureau of Prisons is important to DOCR in order to manage more dangerous inmates. He said to remain PREA compliant, a staffing ratio at the Youth Correctional Center of 1 staff member to 8 juveniles must be maintained during waking hours, and a ratio of 1 staff member to 16 juveniles must be maintained during sleeping hours. He said it is estimated 10 additional staff members will need to be added at the Youth Correctional Center during the 2017-19 biennium to meet the required ratios.

In response to a question from Chairman Delzer, Mr. Krabbenhoft said he would provide additional information regarding funding for crime victims assistance and the source of matching funds provided by local groups for crime victims assistance grants.

In response to a question from Senator Carlisle, Mr. Krabbenhoft said he would provide additional information regarding the regional distribution of crime victims assistance grant funds.

In response to a question from Chairman Delzer, Mr. Krabbenhoft said he would provide further information regarding the 2015-17 general fund appropriation for crime victims compensation.

In response to a question from Chairman Delzer, Mr. Krabbenhoft said he would provide further information regarding the total cost of incarcerating undocumented criminal aliens.

Senator Carlisle suggested the committee receive information regarding whether the DOCR's PREA compliance affects funding for the Attorney General. Chairman Delzer said further information regarding the effects on other state agencies would be presented at the next meeting.

Mr. Mertz, presented information ([Appendix J](#)) regarding statutory and regulatory requirements relating to federal funding for DPI. He said DPI receives over \$129 million in federal funds for various grant programs. He said DPI receives grants from the United States Department of Agriculture, the Department of Education, the Centers for Disease Control and Prevention, and the Department of Health and Human Services.

In response to a question from Chairman Delzer, Ms. Linda Schloer, Director, Child Nutrition and Food Programs, Department of Public Instruction, said the emergency food assistance program helps supplement the diets of low-income North Dakotans, regardless of age.

In response to a question from Chairman Delzer, Mr. Mertz said he would provide additional information regarding DPI outcome reviews of federal grant programs administered by the department.

In response to a question from Representative Wallman, Mr. Mertz said he would provide additional information regarding federal funding provided to regional education associations.

In response to a question from Representative Kasper, Mr. Robert Bauer, State Assessment Coordinator, Department of Public Instruction, said the state is allowed to develop its own rigorous standards and assessments. He said there is a peer review process that must be undertaken to demonstrate the rigorous standards.

In response to a question from Representative Vigesaa, Mr. Mertz said he would provide additional information regarding the allocation of federal grant funding for administrative costs, including the grant for the team nutrition program.

Chairman Delzer suggested the committee select certain programs for further review.

Representative Kasper suggested the committee receive further information regarding the Title VI state assessment program.

Senator Sorvaag suggested the committee receive further information regarding the English language learner program.

Representative Becker suggested the committee receive additional information regarding requirements relating to the federal grant programs. Chairman Delzer suggested DPI be asked to provide the committee a one page summary identifying the program, funding, and key guidelines and requirements for each program.

In response to a question from Representative Haak, Mr. Mertz said the free and reduced lunch program funding affects other programs. Chairman Delzer requested DPI provide further information regarding the other programs affected by funding for the free and reduced lunch program.

STUDY OF THE FUNCTIONS OF THE BUDGET SECTION

The Legislative Council staff presented a memorandum entitled [University of North Dakota School of Medicine and Health Sciences Naming Rights](#). The memorandum provides information regarding donations relating to naming rights for the new University of North Dakota (UND) School of Medicine and Health Sciences (SMHS) building. The 2013 Legislative Assembly appropriated \$60.45 million and the 2015 Legislative Assembly appropriated an additional \$62 million to UND for a new SMHS facility. To raise funds for other areas of need, UND SMHS has offered naming opportunities within the new facility to eligible donors. The focus of fundraising associated with UND SMHS facility naming rights is on student scholarships. As of January 21, 2016, 10 donors associated with naming opportunities in the new UND SMHS building had contributed a total of approximately \$1.3 million for student scholarships; two donors had contributed a total of approximately \$963,000 for programming; and one donor had contributed \$1 million for faculty support.

Senator Kilzer expressed concern that UND SMHS is soliciting donations for naming rights associated with the new building.

The Legislative Council staff presented a memorandum entitled [History of Changes Relating to Budget Section Duties](#). The memorandum provides information regarding changes to Budget Section duties, including changes to the minimum amounts requiring reporting to or approval from the Budget Section. The minimum amounts for several Budget Section duties have not been changed in over 10 years.

The Legislative Council staff presented a memorandum entitled [History of Budget Section Approval of New Capital Construction Projects](#). The memorandum provides information regarding the history of Budget Section approval of capital projects pursuant to North Dakota Century Code Section 15-10-12.1. This section requires the

consent of the Legislative Assembly or the Budget Section for construction of any building financed with donations, gifts, and grants and for campus improvements or building maintenance financed with donations, gifts, and grants if the cost of the improvements or maintenance is more than \$385,000. During the 2007-08 interim, the Budget Section approved requests from UND and North Dakota State University (NDSU) to accept and spend \$900,000 each for new president's residences. During the 2009-10 interim, the Budget Section approved a request from NDSU for a \$29.36 million addition to the Research I facility. During the 2011-12 interim, the Budget Section approved a request from UND for a \$2 million Alumni Center construction project. During the 2013-14 interim, the Budget Section approved requests from UND to spend \$24.95 million for an aerospace building project and \$15.5 million for a collaborative energy center project.

Chairman Delzer said the construction of new buildings adds to campus maintenance and operations costs. He suggested the minimum amount in Section 15-10-12.1 could be increased, but new buildings and major expansions should require approval of the Legislative Assembly.

Representative Kasper said the majority of the projects identified in the memorandum as being approved by the Budget Section do not appear to have been emergency projects.

Senator Sorvaag suggested the Legislative Council staff be asked to provide additional information regarding the dates on which the Budget Section approved the projects.

Chairman Delzer directed the Legislative Council staff to prepare a bill draft to increase the minimum amount in Section 15-10-12.1 to \$700,000 and to remove the authority of the Budget Section to approve the construction of new buildings and building expansions.

Chairman Delzer suggested the committee consider repealing Section 54-16-04.3, which provides authority for the Budget Section to approve the addition of new FTE employees.

Chairman Delzer suggested the committee consider options to ensure compliance with Section 54-27-27, which requires OMB to present, at each meeting of the Budget Section, reports received from state agencies that have applied for federal grants estimated to be \$25,000 or more.

The Legislative Council staff presented a memorandum entitled [Contingent Funding Allocation for the Central Dakota Water Supply Project - Background Information](#). The memorandum provides information regarding the contingent funding allocation from the State Water Commission's water and atmospheric resources line item for the Central Dakota Water Supply Project, as provided for in Section 19 of 2015 Senate Bill No. 2020. This section provides for a contingent allocation of \$10 million for a grant, \$40 million for a loan for a water reuse facility, and \$20 million for the Central Dakota Water Supply Project from the State Water Commission's water and atmospheric resources line item appropriation. The \$70 million of allocations are contingent on the State Water Commission entering into a written agreement that a fertilizer or chemical processing facility will be constructed in Stutsman County. The Legislative Council staff said it appears the contingency will not be met; however, the funds are still appropriated to the State Water Commission for the 2015-17 biennium. Concerns over the potential use of the appropriated funds for purposes other than the Central Dakota Water Supply Project and related grants and loans have led to questions regarding the authority of the Budget Section to approve alternative uses of the appropriated funds. The Chairman of the Legislative Management has directed the Government Finance Committee to review the provisions of Section 19 of 2015 Senate Bill No. 2020 and to determine whether it would be appropriate for the Budget Section to reallocate the funds.

Chairman Delzer said his understanding of the legislative intent of Section 19 of 2015 Senate Bill No. 2020 was for the funding to be available for the Central Dakota Water Supply Project if the contingency was met and for the funding to not be used if the contingency was not met. He said the best way to address this issue in the future is for the Legislative Assembly to provide adequate direction during the budgeting process on how the funds are to be used and the Budget Section's role, if any, in allocating funds.

Representative Schmidt said the \$70 million is currently appropriated to the State Water Commission, but the State Engineer would like legislative guidance regarding potential reallocation of the funds. He said the \$70 million is from a line of credit.

Representative Pollert said he would not support the Budget Section reallocating the \$70 million for other projects.

It was moved by Representative Laning, seconded by Representative Kasper, and carried on a roll call vote that the Chairman of the Legislative Management encourage the State Water Commission to refrain

from spending any of the \$70 million of contingent funding designated by the 2015 Legislative Assembly for the Central Dakota Water Supply Project and not reallocate the funds for other purposes. Representatives Delzer, Becker, Froseth, Haak, Headland, Kasper, Laning, Lefor, Louser, Pollert, Schmidt, Steiner, Vigesaa, and Wallman and Senators Carlisle, Kilzer, Marcellais, and Sorvaag voted "aye." No negative votes were cast.

Chairman Delzer suggested the committee discuss the following at future meetings:

- The appropriateness of the requirement for a 2.5 percent allotment prior to use of the budget stabilization fund;
- The potential to raise the budget stabilization fund balance limit to 10 percent of biennial general fund appropriations;
- The potential of requiring a certain percentage of allotments be made to ongoing spending; and
- The potential to enact a law providing for the involvement of the legislative branch in reviewing and approving revenue forecasts made during the interim.

In response to a question from Representative Kasper, the Legislative Budget Analyst and Auditor said there is currently no Legislative Management interim committee with the authority to contract with a consultant to prepare a revenue forecast, but the Chairman of the Legislative Management could create and assign that duty to a committee.

No further business appearing, Chairman Delzer adjourned the meeting at 4:00 p.m.

Alex J. Cronquist
Fiscal Analyst

ATTACH:10