

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**BUDGET SECTION**

Wednesday, June 26, 2019  
Senate Chamber, State Capitol  
Bismarck, North Dakota

Senator Terry M. Wanzek, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Terry M. Wanzek, Brad Bekkedahl, Dick Dever, John Grabinger, Joan Heckaman, David Hogue, Karen K. Krebsbach, Gary A. Lee, Tim Mathern, Dave Oehlke, Nicole Poolman, Larry J. Robinson, Ronald Sorvaag, Rich Wardner; Representatives Bert Anderson, Thomas Beadle, Larry Bellew, Josh Boschee, Jeff Delzer, Karla Rose Hanson, Michael Howe, Keith Kempenich, Lawrence R. Klemin, Gary Kreidt, Scott Louser, Bob Martinson, Lisa Meier, Corey Mock, Mike Nathe, Jon O. Nelson, Mark Sanford, Mike Schatz, Jim Schmidt, Randy A. Schobinger, Don Vigesaa

**Members absent:** Senators Robert Erbele, Ray Holmberg, Jerry Klein; Representatives Tracy Boe, Mike Brandenburg, Richard G. Holman, David Monson, Chet Pollert

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

At the request of Chairman Wanzek, the Legislative Council staff reviewed the following memorandums and reports:

- [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#)
- [Budget Section Duties and Responsibilities for the 2019-21 Biennium](#)
- [66<sup>th</sup> Legislative Assembly State Budget Actions for the 2019-21 Biennium](#)
- [2019-21 Biennium Oil and Gas Tax Revenue - Allocation Flowchart](#)
- [Estimated Revenue Sources and Distributions for Major State Funds for the 2019-21 Biennium](#)
- [Budget Status Report for the 2019-21 Biennium](#)
- [66<sup>th</sup> Legislative Assembly Changes to Agency Budgets for the 2019-21 Biennium](#)

**STATUS OF THE GENERAL FUND**

Mr. Joe Morrissette, Director, Office of Management and Budget, presented a report ([Appendix B](#)) on the status of the general fund. He presented the following information on the status of the general fund as of May 31, 2019, for the 2017-19 biennium:

Unobligated general fund balance - July 1, 2017		\$65,000,000
Balance obligated for authorized carryover from the 2015-17 biennium		99,271,093
Total beginning general fund balance - July 1, 2017		\$164,271,093
Add		
General fund collections through May 2019	\$4,306,048,770	
Forecasted general fund revenues for the remainder of the 2017-19 biennium	410,537,415	
Total revenues		4,716,586,185
Total available		\$4,880,857,278
Less		
Legislative appropriations - One-time	(\$14,638,226)	
Legislative appropriations - Ongoing	(4,295,624,415)	
Authorized carryover from previous biennium	(99,271,093)	

Deficiency and supplemental appropriations	(115,560,181)	
Estimated unspent authority	47,102,873	
Total appropriations		(4,477,991,042)
Estimated ending general fund balance - June 30, 2019 - Before transfers		\$402,866,236
Transfer to budget stabilization fund <sup>1</sup>		(337,866,236)
Estimated ending general fund balance - June 30, 2019		\$65,000,000

<sup>1</sup>Pursuant to North Dakota Century Code Chapter 54-27.2, any end-of-biennium balance in excess of \$65 million must be transferred to the budget stabilization fund, up to a maximum of 15 percent of general fund appropriations.

Mr. Morrisette said 2017-19 biennium-to-date general fund revenues are \$52.8 million more than the 2019 revised legislative revenue forecast. He said 2017-19 biennium-to-date general fund revenues are \$503.2 million less than the 2015-17 biennium; however, he said the 2015-17 biennium general fund revenues included several special fund transfers that were not continued into the 2017-19 biennium.

**BALANCES OF SELECTED SPECIAL FUNDS**

Mr. Morrisette presented the following schedule detailing estimated fund balances of selected special funds as of May 31, 2019:

Budget stabilization fund	\$113,551,330
Legacy fund	\$6,445,204,047
Foundation aid stabilization fund	\$402,128,178
Tax relief fund	\$200,000,000

Mr. Morrisette said the balance of the strategic investment and improvements fund as of March 31, 2019, was \$930,228,010. However, he said, \$267,222,231 of the fund balance is obligated for various uses.

In response to a question from Representative Nathe, Mr. Morrisette said the estimated unobligated June 30, 2019, balance of the strategic investment and improvements fund is \$866 million.

Representative Delzer said any 2017-19 biennium oil and gas tax collections up to \$40 million deposited in the strategic investment and improvements fund in excess of \$755 million are to be transferred to the infrastructure revolving loan fund.

Mr. Morrisette said approximately \$20 million of 2017-19 biennium oil and gas tax collections deposited in the strategic investment and improvements fund will be transferred to the infrastructure revolving loan fund.

In response to a question from Senator Bekkedahl, Mr. Morrisette said oil and gas tax collections attributable to May 2019 production will be the last oil and gas tax collections recognized in the 2017-19 biennium. He said oil and gas tax collections resulting from June 2019 production will be recognized in the 2019-21 biennium.

**TOBACCO SETTLEMENT PROCEEDS**

Mr. Morrisette presented information ([Appendix C](#)) on the status of tobacco settlement proceeds received by North Dakota. He said the April 2019 payments totaled \$21 million and were deposited in the tobacco settlement trust fund. A summary of the 2017-19 biennium allocations from the tobacco settlement trust fund is listed below.

Period	Community Health Trust Fund	Water Development Trust Fund	Attorney General	Total
April 2018	\$29,093,106	\$23,803,450	\$200,000	\$53,096,556
July 2018	87,407	71,515	0	158,922
April 2019	11,537,589	9,439,845	0	20,977,434
Total	\$40,718,102	\$33,314,810	\$200,000	\$74,232,912

**STATE AGENCY APPLICATIONS FOR FEDERAL GRANTS**

Mr. Morrisette presented information ([Appendix D](#)) on state agencies that applied for federal grants estimated to be \$25,000 or more pursuant to Section 54-27-27. He said the following agencies have applied for a federal grant estimated to be \$25,000 or more:

Agency	Time Period of Grant	Amount
Adjutant General	October 2019 - September 2020	\$1,200,000
Adjutant General	July 2019 - March 2022	\$1,326,425
Department of Agriculture	July 2019 - June 2021	\$310,660

Department of Public Instruction	October 2019 - September 2024	\$500,000
Department of Public Instruction	July 2019 - July 2024	\$35,000,000
Department of Transportation	April 2019 - June 2023	\$3,670,342
Department of Transportation	October 2019 - November 2025	\$40,000,000

### IRREGULARITIES IN THE FISCAL PRACTICES OF THE STATE

Pursuant to Section 54-14-03.1, Mr. Morrissette presented information ([Appendix E](#)) on irregularities in the fiscal practices of the state. He presented the following fiscal irregularities for the period November 2018 through April 2019:

Agency	Fiscal Irregularity	Amount
Department of Human Services	Workload adjustment	\$8,260
Information Technology Department	Workload adjustment	\$2,394
Department of Human Services	Equity adjustment	\$1,000
Department of Commerce	Workload adjustment	\$4,000
Department of Human Services	Workload adjustment	\$980
Governor's office	Workload adjustment	\$1,500
Department of Human Services	Workload adjustment	\$1,300
Department of Human Services	Equity adjustment	\$1,400
Department of Commerce	Workload adjustment	\$543
Department of Commerce	Workload adjustment	\$797
Department of Human Services	Equity adjustment	\$996
Department of Human Services	Workload adjustment	\$2,835
Securities Department	Equity increase	\$1,655
Judicial branch	Workload adjustment	\$1,074
Department of Human Services	Workload adjustment	\$906
Department of Trust Lands	Severance package	\$14,840

Mr. Morrissette said a total of 35 individuals received severance payments from January 2019 through May 2019 through the voluntary separation incentive program as follows:

Agency	Number of Individuals	Total Severance Payments
Information Technology Department	7	\$177,193
Retirement and Investment Office	1	\$19,445
Department of Human Services	9	\$158,059
Bank of North Dakota	1	\$24,437
State Historical Society	1	\$19,721
State Water Commission	3	\$74,155
Department of Transportation	13	\$143,813

### UPDATE ON OIL AND GAS DEVELOPMENT IN THE STATE

Mr. Lynn Helms, Director, Department of Mineral Resources, presented an update ([Appendix F](#)) on the status of oil and gas development in the state. He said there are 62 oil and gas drilling rigs operating in the state. He said most of the drilling activity is occurring in the core area of the Bakken Formation. He said drilling efficiency is increasing and some oil rigs are drilling up to three wells per month.

Mr. Helms said current oil production in the state is approximately 1.4 million barrels per day. He said production is expected to increase to approximately 1.5 million barrels per day by 2021. He said the price of oil will significantly affect the level of oil production in the state.

Mr. Helms said there have been changes in oil regulation and transportation in other states that may affect investments in oil production in North Dakota. He said Colorado and New Mexico have recently enacted new statutes that may decrease oil production in those states. He said a new statute in the state of Washington may significantly reduce or eliminate the transportation of oil by rail in the state, which would negatively affect North Dakota oil activity.

In response to a question from Representative Delzer, Mr. Helms said the Colorado Oil and Gas Commission was changed from a five-member commission that was mostly industry-based to a nine-member commission that includes only one industry member. He said the commission is now focused on environmental and social impacts of oil and gas production. He said most counties in Colorado have established moratoriums on oil and gas development.

In response to a question from Senator Bekkedahl, Mr. Helms said drilling in the Permian Basin of Texas and New Mexico still is focused on securing leaseholds. He said once the primary leasehold drilling is complete, it is anticipated that drilling activity will decrease.

In response to a question from Senator Sorvaag, Mr. Helms said similar to North Dakota, the transportation of oil also is an issue for crude oil production in the Permian Basin. He said there were two recent projects announced that will increase oil pipeline capacity out of North Dakota and decrease the need to transport oil by rail.

In response to a question from Representative Nathe, Mr. Helms said the current transportation discount for North Dakota oil is \$5.91 per barrel from the price of West Texas Intermediate crude. He said the transportation discount will decrease as oil pipeline capacity is increased.

In response to a question from Representative Boschee, Mr. Helms said the current natural gas capture rate is 81 percent. He said the target capture rate is 88 percent.

In response to a question from Senator Bekkedahl, Mr. Helms said there is projected to be sufficient amounts of ethane and natural gas liquids to support new petrochemical processing projects in the state.

In response to a question from Representative Nelson, Mr. Helms said the worldwide marine fleet is anticipated to adjust the fuel source of ships to low-sulfur crude oil. He said refineries near the coasts likely will shift to processing low-sulfur crude oil. He said refineries in the Pacific Northwest will be impacted by the Washington statute to limit the transportation of oil by rail.

In response to a question from Senator Hogue, Mr. Helms said the state is pursuing legal options to address the Washington statute relating to the transportation of oil by rail. He said the state is pursuing federal preemption through the Pipeline and Hazardous Materials Safety Administration. He said federal preemption would likely include an injunction to block the Washington legislation from going into effect during the litigation process.

### **INDUSTRIAL COMMISSION ACTIONS WITH A FISCAL IMPACT OF GREATER THAN \$20 MILLION**

Mr. Helms provided a report ([Appendix G](#)) pursuant to Section 54-17-42 regarding the effect on state revenues and expenditures of any Industrial Commission order, regulation, and policy estimated to have a fiscal impact in excess of \$20 million during a biennium. He said natural gas capturing rules adopted by the Industrial Commission are estimated to have a \$26.5 million positive effect on state revenues.

### **AGENCY REQUESTS APPROVED BY THE EMERGENCY COMMISSION**

Chairman Wanzek directed the Budget Section to consider agency requests ([Appendix H](#)) which have been authorized by the Emergency Commission and forwarded to the Budget Section pursuant to Chapter 54-16.

Mr. Morrisette provided information regarding the following requests that were authorized by the Emergency Commission and require consideration by the Budget Section.

- **Tax Commissioner (Request #1938)** - Request is for \$300,000 from the Emergency Commission's contingency fund for anticipated homestead tax credits that exceed the appropriations for the program which need to be paid by the end of the 2017-19 biennium.
- **Adjutant General (Request #1940)** - Request is for authorization to spend \$494,915 from the state disaster relief fund during the 2017-19 biennium to pay the state share of actual and estimated disaster-related costs incurred between March 6, 2019, and June 30, 2019.
- **Council on the Arts (Request #1941)** - Request is to transfer \$10,000 from the grants line item to the salaries and wages line item to increase the number of hours to be worked by a temporary employee of the agency from 20 to 25 hours per week. The request is for the 2019-21 biennium and will result in the elimination of the poet laureate program.

**It was moved by Representative Kempenich, seconded by Senator Robinson, and carried on a roll call vote that the Budget Section approve Requests #1938 and #1940 which were approved by the Emergency Commission.** Senators Wanzek, Bekkedahl, Dever, Grabinger, Heckaman, Hogue, Krebsbach, Lee, Mathern, Oehlke, Poolman, Robinson, Sorvaag, and Wardner and Representatives Anderson, Beadle, Bellew, Boschee, Delzer, Hanson, Howe, Kempenich, Klemin, Kreidt, Louser, Martinson, Meier, Mock, Nathe, Nelson, Sanford, Schatz, Schmidt, Schobinger, and Vigesaa voted "aye." No negative votes were cast.

Chairman Wanzek called for discussion on Request #1941 which would transfer funding from the Council on the Arts grants line item to the salaries and wages line item.

Representative Meier said she does not support the request. She said the request should be addressed during the legislative budgeting process.

Representative Delzer said the request would change the amounts approved by the Legislative Assembly approximately 2 months ago. He said if the request is approved other agencies may seek Budget Section approval in the future to change budget items approved by the Legislative Assembly. He said the Budget Section should not change the amounts approved by the Legislative Assembly.

Representative Kreidt said the budget request for the Council on the Arts was reviewed by the Human Resources Division of the House Appropriations Committee. He said the division approved increasing the hours of the temporary employee to 20 hours per week. He said the agency should have requested the additional funding to further increase the hours of the position during the budgeting process.

In response to a question from Senator Mathern, Ms. Kim Konikow, Executive Director, Council on the Arts, said the request to transfer funding from the grants line item to the salaries and wages line item was included in testimony presented to the House and Senate Appropriations Committees. She said the final agency budget included funding to increase the number of hours worked by a temporary administrative assistant by 5 hours per week. She said she believes two related funding adjustments included in the agency's budget request for the temporary position were overlooked when the committees considered the budget.

Representative Delzer said the related funding adjustments were not overlooked by the Appropriations Committees. He said the funding added by the Conference Committee to increase the number of hours worked by the temporary position by 5 hours per week was the compromise between the committees. He said the entire Legislative Assembly voted on the agency's budget and this request would change what was approved.

**It was moved by Representative Martinson, seconded by Representative Meier, and carried on a roll call vote that the Budget Section deny Request #1941 which was approved by the Emergency Commission.** Senators Wanzek, Bekkedahl, Dever, Grabinger, Heckaman, Hogue, Krebsbach, Lee, Oehlke, Poolman, Robinson, Sorvaag, and Wardner and Representatives Anderson, Beadle, Bellew, Boschee, Delzer, Hanson, Howe, Kempenich, Klemin, Kreidt, Louser, Martinson, Meier, Mock, Nathe, Nelson, Sanford, Schatz, Schmidt, Schobinger, and Vigesaa voted "aye." Senator Mathern voted "nay."

## **LEGACY AND BUDGET STABILIZATION FUND ADVISORY BOARD REPORT**

Representative Kempenich, Chairman, Legacy and Budget Stabilization Fund Advisory Board, presented a memorandum entitled [Legacy and Budget Stabilization Fund Advisory Board - Status Report to the Budget Section June 26, 2019](#) regarding the investment of funds in the legacy fund and budget stabilization fund pursuant to Section 21-10-11. He said the market value of the budget stabilization fund as of March 31, 2019, was \$117 million. He said the asset allocation of the budget stabilization fund is 100 percent short-term fixed income and cash. He said the 1-year average earnings of the fund is approximately 3 percent.

Representative Kempenich said the market value of the legacy fund as of March 31, 2019, was \$6.21 billion. He said approximately \$454 million of 2017-19 biennium legacy fund earnings will be transferred to the general fund at the end of 2017-19 biennium. He said due to the timing of accounting and reporting at the end of the biennium, the 2017-19 biennium transfer will include realized earnings through May 2019 (23 months). He said future transfers will include 24 months of earnings, earnings realized from June of the previous biennium through May of the current biennium. He said the legacy fund's 1-year net return as of March 31, 2019, was 2.58 percent compared to a target return of 3.74 percent.

## **STATE AGENCY UNCLAIMED PROPERTY**

Ms. Jodi A. Smith, Commissioner, Board of University and Schools Lands, presented a report ([Appendix I](#)) on state agencies that have not submitted a claim for unclaimed property belonging to those agencies. She said two agencies claimed properties totaling \$885. She said 13 agencies had unclaimed properties totaling \$10,171.21.

**It was moved by Senator Robinson, seconded by Representative Mock, and carried on a roll call vote that pursuant to Section 47-30.1-24.1 the Budget Section approve the list provided by the Board of University and School Lands of the following state agencies relinquishing their rights to recover unclaimed property:**

- Insurance Department
- Housing Finance Agency
- North Dakota State College of Science

- **University of North Dakota**
- **Job Service North Dakota**
- **Attorney General**
- **North Dakota State University**
- **Department of Human Services**
- **Tax Department**
- **Bank of North Dakota**
- **Department of Transportation**
- **Secretary of State**
- **Workforce Safety and Insurance**

Senators Wanzek, Bekkedahl, Dever, Grabinger, Heckaman, Hogue, Krebsbach, Lee, Mathern, Oehlke, Poolman, Robinson, Sorvaag, and Wardner and Representatives Anderson, Beadle, Bellew, Boschee, Delzer, Hanson, Howe, Kempenich, Klemin, Kreidt, Louser, Martinson, Meier, Mock, Nathe, Nelson, Sanford, Schatz, Schmidt, Schobinger, and Vigesaa voted "aye." No negative votes were cast.

### **STATUS OF THE UNEMPLOYMENT INSURANCE TRUST FUND AND THE MODIFIED AVERAGE HIGH-COST MULTIPLIER**

Mr. Darren Brostrom, Deputy Director, Job Service North Dakota, presented information ([Appendix J](#)) on the status of the unemployment insurance trust fund and the targeted modified average high-cost multiplier pursuant to Section 52-02-17. He said the multiplier is an actuarial calculation used to project the length of time the existing fund balance could support benefit payments at historically high payout rates and with no future revenue. He said the trust fund is financed by quarterly employer unemployment insurance taxes and these funds are used to pay unemployment insurance benefits.

Mr. Brostrom said as of December 31, 2018, the balance of the unemployment trust fund was \$187 million, \$5 million more than the target balance of \$182 million. He said the modified average high-cost multiplier was 1.03, 0.03 above the projected target of 1.0.

No further business appearing, Chairman Wanzek adjourned the meeting at 11:40 a.m.

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Brady A. Larson  
Assistant Legislative Budget Analyst and Auditor

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:10